

{In Archive} Re: Fw: Another Missouri Company making claims 

**Jamie Green** to: Royan Teter

07/02/2012 06:30 AM

History: This message has been forwarded.

Archive: This message is being viewed in an archive.

Whoever you want - or just the two of us if you want. Could do it during our weekly -  
Sent by EPA Wireless E-Mail Services  
Royan Teter

----- Original Message -----

**From:** Royan Teter

**Sent:** 06/29/2012 06:26 PM CDT

**To:** Jamie Green

**Subject:** Re: Fw: Another Missouri Company making claims

Who do you want to attend?

=====

Royan Teter  
Chief, Pesticides Section  
U.S. Environmental Protection Agency - Region 7  
WWPD/TOPE/PEST  
901 N. 5th St  
Kansas City, KS 66101

Phone: (913) 551-7609

Fax: (913) 551-9609

Jamie Green

I know we have been referring the out of Region...

06/29/2012 10:34:07 AM

**From:** Jamie Green/R7/USEPA/US  
**To:** Royan Teter/R7/USEPA/US@EPA  
**Date:** 06/29/2012 10:34 AM  
**Subject:** Fw: Another Missouri Company making claims

I know we have been referring the out of Region companies to others as appropriate. Could you set something up to discuss with me the number, location, and current plans for follow-up for those within our own Region for sometime next week.

Thanks

Jamie Green, Chief  
Toxics and Pesticides Branch  
U.S. EPA - Region 7  
901 N 5th St  
Kansas City, KS 66101  
Phone: 913-551-7139

----- Forwarded by Jamie Green/R7/USEPA/US on 06/29/2012 10:31 AM -----

**From:** Alyse Stoy/R7/USEPA/US  
**To:** Jamie Green/R7/USEPA/US@EPA, Royan Teter/R7/USEPA/US@EPA, Mark Leshner/R7/USEPA/US@EPA

Cc: Chris Dudding/R7/USEPA/US@EPA  
Date: 06/29/2012 10:25 AM  
Subject: Fw: Another Missouri Company making claims

---

See email from AgXplore counsel below re: another competitor product.

Alyse Stoy  
Chemical Management Branch  
Office of Regional Counsel  
U.S. EPA Region VII  
901 N. 5th Street  
Kansas City, KS 66101  
(913) 551-7826 phone  
(816) 807-3271 cell  
(913) 551-7925 fax  
stoy.alyse@epa.gov

----- Forwarded by Alyse Stoy/R7/USEPA/US on 06/29/2012 10:24 AM -----

From: Gary W Callahan <gwcallahanpc@me.com>  
To: Chris Dudding/R7/USEPA/US@EPA  
Cc: Alyse Stoy/R7/USEPA/US@EPA  
Date: 06/29/2012 10:09 AM  
Subject: Another Missouri Company making claims

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Here is more of AgXplore's competition, unregistered

<http://www.agrigro.com/products/foliarblend/index.html>

Gary W Callahan  
[gwcallahanpc@me.com](mailto:gwcallahanpc@me.com)  
Gary W. Callahan, P. C.  
4550 Westridge Dr.  
Ft. Collins CO 80526  
970-221-3333 office  
970-221-3394 fax  
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Gary W. Callahan, P.C. 970.221-3333

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**Leshner, Mark**

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**To:** Wilkinson, Robert  
**Cc:** Dudding, Chris; Stephen Smith / Agri-Gro Marketing, Inc.; Leshner, Mark  
**Subject:** RE: Agri-Gro Marketing Inc. - Response to November 15, 2012 Notice of Warning

Dear Mr. Wilkinson,

The EPA has received and reviewed the Agri-Gro Marketing, Inc. response to our November 15, 2012, Notice of Warning (NOW). The compliance steps of removing the pesticidal and plant growth regulator claims for the FoiaBlend, Turf Formula, IgniteS<sup>2</sup>, and Bountiful Harvest products fully address the violations noted in the NOW. Agri-Gro Marketing, Inc. may now post these marketing materials on their websites and continue business as usual.

In regards to the Bountiful Harvest products, the copy mentions that the products "are safe for use around children and pets." We suggest you add the statement "if used as directed" to this statement.

At this point in time, we are considering this matter resolved. Please note, our November 15, 2012, Notice of Warning does not preclude the EPA from taking additional enforcement action for violations related to this inspection or other violations of FIFRA. Please contact me at (913) 551-7054 or [lesher.mark@epa.gov](mailto:lesher.mark@epa.gov) if you need additional guidance or assistance with FIFRA compliance in marketing future possible pesticide products. EPA thanks you for your cooperation during our investigation and your quick response in ensuring compliance with our nation's pesticide laws.

Mark K. Leshner, M.S.  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
[lesher.mark@epa.gov](mailto:lesher.mark@epa.gov)

---

**From:** Wilkinson, Robert [<mailto:Robert.Wilkinson@huschblackwell.com>]  
**Sent:** Wednesday, July 03, 2013 2:12 PM  
**To:** Leshner, Mark  
**Cc:** Dudding, Chris; Stephen Smith / Agri-Gro Marketing, Inc.  
**Subject:** RE: Agri-Gro Marketing Inc. - Response to November 15, 2012 Notice of Warning

Mr. Leshner,

Thank you for the prompt reply. The original letter that was mailed to you includes a CD with unzipped pdf files. For your convenience, I've attached the pdf files (there are five individual files). Please let me know if you have any trouble with the attachments.

Bob Wilkinson

**Robert F. Wilkinson**  
**Partner**  
Direct: 314.480.1842  
[Robert.Wilkinson@huschblackwell.com](mailto:Robert.Wilkinson@huschblackwell.com)

---

**From:** Leshner, Mark [<mailto:Leshner.Mark@epa.gov>]  
**Sent:** Wednesday, July 03, 2013 2:03 PM  
**To:** Wilkinson, Robert  
**Cc:** Dudding, Chris; Stephen Smith / Agri-Gro Marketing, Inc.; Leshner, Mark  
**Subject:** RE: Agri-Gro Marketing Inc. - Response to November 15, 2012 Notice of Warning

Dear Mr. Wilkinson,

Thank you for the attached letter from Mr. Stephen Smith, Agri-Gro Marketing Inc. and associated Agri-Gro.zip files. Unfortunately, EPA new e-mail/computer system cannot open or read these .zip files. Can you please send them in another format (suggest .doc, .docx or .pdf) so we may be able to complete our review. Once we are able to complete our review, we will contact you to discuss Agri-Gro Marketing's compliance actions.

Mark K. Leshner, M.S.  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
[lesher.mark@epa.gov](mailto:lesher.mark@epa.gov)

---

**From:** Wilkinson, Robert [<mailto:Robert.Wilkinson@huschblackwell.com>]  
**Sent:** Tuesday, July 02, 2013 4:06 PM  
**To:** Leshner, Mark  
**Cc:** Dudding, Chris  
**Subject:** Agri-Gro Marketing Inc. - Response to November 15, 2012 Notice of Warning

Please see the attached letter and attachments. The original letter has been placed in the mail.

Bob Wilkinson

**Robert F. Wilkinson**  
**Partner**

**HUSCH BLACKWELL LLP**  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105-3433  
Direct: 314.480.1842  
Fax: 314.480.1505  
[Robert.Wilkinson@huschblackwell.com](mailto:Robert.Wilkinson@huschblackwell.com)  
[huschblackwell.com](http://huschblackwell.com)  
[View Bio](#) | [View VCard](#)

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Agri-Gro Marketing, Inc.  
HC 4 Box 333  
Doniphan, MO 63935

TOPE Rec'd JUL 09 2013

July 1, 2013

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**VIA E-MAIL**

Mark K. Leshner  
FIFRA Enforcement Officer  
Toxics and Pesticides Branch  
US EPA Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

Re: Nov. 15, 2012 Notice of Warning

Dear Mark,

In response to the November 15, 2012 Notice of Warning and subsequent communications from your office (collectively, the "FIFRA Warning"), Agri-Gro Marketing, Inc. ("Agri-Gro") took its [agrigro.com](http://agrigro.com) and [bountiful-harvest.com](http://bountiful-harvest.com) webpages offline and revised its marketing materials to ensure compliance with FIFRA. The attached table explains how the items identified in the November 15, 2012 Notice of Warning and follow-up letter dated May 8, 2013 were addressed. Attached you will also find our revised marketing materials as well as copies showing the precise changes made to delete the erroneous descriptions identified in the FIFRA Warning.

As we have previously explained, Agri-Gro's products are plant nutritional supplements. These nutritional supplements are, essentially, non-conventional fertilizers that have soil amendment and plant nutrient product characteristics. The response of plants and crops to Agri-Gro products described in Agri-Gro's marketing materials results from better nutrition (by increasing availability of macro- and micro-nutrients, and improving soil permeability, etc.) rather than an alteration of the plant's behavior or action upon pests.

Because Agri-Gro products are intended only to support the growth of beneficial soil flora through improved nutrient availability so as to restore soil flora and physical conditions to more natural conditions not present in the extensively modified growing conditions of modern agriculture, and to support optimal plant health and development, our marketing materials were revised to better reflect this mode of action (improved nutrition) and delete extraneous information about secondary benefits which may be read to imply a pesticidal effect. For example, observations about the consequential decreased concentration of pathogenic bacteria as the number of beneficial bacteria increase have been deleted to avoid confusion about these products having a pesticidal effect, and observations about larger root mass have been revised to eliminate any confusion about these products having a growth stimulant effect and more accurately describe the observed differences as nutritional and physical in nature (i.e., improved





soil permeability addresses the physical constraints on root development presented by harder, untreated soil; root mass is proportionally larger in comparison with untreated plants, as treated plants are more nutritionally sound and, therefore, larger overall; and products contain micro-nutrients known to *support* robust plant growth and development).

In revising our marketing materials, we have attempted to eliminate any ambiguity in touting the mode of action and benefits of Agri-Gro products and we believe the revised Agri-Gro marketing materials more clearly and more accurately describe the non-pesticidal nature of these products. These documents have not been published to the internet or elsewhere and will not be used until we receive confirmation from your office that our changes address your concerns. Given that a significant portion of our business is internet-based, we would appreciate your prompt review and feedback on the revisions we have made. If additional changes are required, we would appreciate an opportunity to discuss alternative verbiage at your earliest convenience.

We trust that the revisions we have made to our marketing materials better reflect and convey the nutritional and physical mode of action of Agri-Gro's products. Please do not hesitate to call either me or our counsel, Robert Wilkinson, at (314) 480-1842 with any questions or concerns about the information above or the marketing document revisions.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Smith", written in a cursive style.

Stephen Smith  
President

Enclosures

cc: R. Wilkinson





**Table. 1. Actions Taken to Ensure Compliance with FIFRA**

Product Name	Pesticidal Claims / Ingredients or Issue	Action Taken
		General marketing materials, materials which relate to more than one product, and materials for products other than those identified in the Notice of Warning which referred to those identified in the Notice of Warning have been revised to reflect the changes noted below. See "General Marketing" pdf file.
<b>Agri-Gro Bio-Stimulant</b>  (from Nov. 15, 2012 Notice of Warning)	<ul style="list-style-type: none"> <li>• Agri-Gro is a natural bio-stimulant</li> <li>• Increased root development</li> <li>• Reduce Disease and Harmful Bacteria</li> <li>• Ability of this product to reduce diseases</li> <li>• Enhances the germination of most any seed and increases root growth and penetration by up to 50%</li> <li>• Provides ... other growth stimulants not found in ordinary fertilizers</li> <li>• Assists in seed germination and early plant growth</li> <li>• Improves development of root systems</li> <li>• The single greatest potential for Agri-Gro® may be in the control or reduction of this disease [Anthracnose], especially since there are few fungicides available that are effective in controlling it</li> <li>• Increase in root mass</li> </ul>	Marketing materials for this product have been permanently removed. This product is no longer in production.



Product Name	Pesticidal Claims / Ingredients or Issue	Action Taken
<b>Foliar Blend Bio-Stimulant</b>  (from Nov. 15, 2012 Notice of Warning)	<ul style="list-style-type: none"> <li>• Establish larger root systems with stronger stalks</li> <li>• Improves germination, plant emergence and promotes vigorous root growth up to 50%</li> <li>• Elevates the plants' natural defense mechanisms</li> <li>• Minimizing disease, insect pressure and weather-related stress</li> <li>• Reduction in fungicide use by 50% or more</li> <li>• Increased root development</li> <li>• Less disease and insect pressure</li> <li>• Minimize disease and soil borne pathogens</li> <li>• Improves development of root system</li> <li>• Suppresses soil borne pathogens</li> <li>• Supplies ... power growth stimulants</li> <li>• Elevate the plant's natural defense system against a range of disease causing fungi, bacteria and viruses</li> <li>• Reduce the impact of insect damage on crops</li> <li>• Contains natural plant growth stimulants that trigger root growth and development</li> <li>• Levels of Fusarium colonization lowered by 66% (soybeans) 48% (corn)</li> <li>• Less symptoms of rice tungro virus &amp; raggedstunt virus</li> </ul>	The name of this product was changed and marketing materials for this product have been revised. See "Foliar Blend" pdf file.
<b>Foliar Blend Nutritional Plant Supplement</b>  (from May 8, 2013 follow-up letter)	<ul style="list-style-type: none"> <li>• <i>This product is marketed with insecticidal, fungicidal, and plant regulator pesticide claims and is thereby subject to regulation under FIFRA.</i></li> <li>• Foliar Blend simply helps your crop...by...supporting a healthy, disease suppressive growing environment</li> <li>• Crops treated with Foliar Blend...experience less disease pressure</li> <li>• Minimize disease, insect pressure</li> <li>• This brings to light another advantage of</li> </ul>	Marketing materials for this product have been revised. See "Foliar Blend" pdf file.



Product Name	Pesticidal Claims / Ingredients or Issue	Action Taken
	<p>FoliarBlend, the ability to minimize disease and soil borne pathogens</p> <ul style="list-style-type: none"> <li>• Foliar Blend can help the plant hang on to more flowers or kernels</li> <li>• Growth stimulants found in FoliarBlend enhance photosynthesis and the plant's ability to provide carbohydrates, proteins and other growth compounds</li> <li>• Elevating the plant's natural defense system against a range of disease causing fungi, bacteria and viruses</li> <li>• May reduce the impact of insect damage on crops</li> <li>• Improves photosynthesis</li> <li>• Supplies essential plant nutrition, improving plant health and natural resistance to disease, pests and stress</li> <li>• The ingredients in FoliarBlend elevate the plant's natural defense system prior to any period of stress</li> </ul>	
<p><b>IgniteS2</b> (from Nov. 15, 2012 Notice of Warning)</p> <p>(from May 8, 2013 follow-up letter)</p>	<ul style="list-style-type: none"> <li>• Contains ... plant stimulants not found in ordinary fertilizers</li> <li>• Increases ... root growth, ... and lowers disease pressure</li> <li>• Establish larger root systems with stronger stalks</li> </ul> <ul style="list-style-type: none"> <li>• <i>This product is marketed with insecticidal, fungicidal, and plant regulator pesticide claims and is thereby subject to regulation under FIFRA.</i></li> <li>• Help plants...overcome stress from weather, disease</li> <li>• Crops treated with IgniteS<sup>2®</sup> are healthier and experience less disease pressure</li> <li>• Support the plant's natural defense system</li> <li>• Germination and early plant development is significantly improved</li> <li>• Improves natural resistance to pests</li> </ul>	<p>Marketing materials for this product have been revised. See "IgniteS2" pdf file.</p>



Product Name	Pesticidal Claims / Ingredients or Issue	Action Taken
	<ul style="list-style-type: none"> <li>• IgniteS<sup>2</sup> significantly increases root growth...on soybeans</li> <li>• Corn Research - IgniteS<sup>2</sup> treated plots had lower levels of Fusarium colonization...Fusarium colonization is an indicator of the potential fungal infection of roots, which can lead to disease. ...aiding in the suppression of fungal pathogens</li> <li>• Soybean Research - IgniteS<sup>2</sup> treated plots had lower levels of Fusarium colonization...Fusarium colonization is an indicator of the potential fungal infection of roots, which can lead to disease. ...aiding in the suppression of fungal pathogens</li> </ul>	
<b>Turf Formula Nutrient Activator</b>  (from Nov. 15, 2012 Notice of Warning)	<ul style="list-style-type: none"> <li>• A scientifically balanced formula of micro-nutrients, carbohydrates, enzymes, amino acids, stabilized oxygen, and other growth stimulants</li> <li>• Turf Formula Bio-Stimulant Nutrient Activator boosts both plant and root growth</li> <li>• Increases root mass and penetration</li> </ul>	The name of this product was changed and marketing materials for this product have been revised. See "Turf Formula" pdf file.
<b>Turf Formula Nutritional Plant Supplement</b>  (from May 8, 2013 follow-up letter)	<ul style="list-style-type: none"> <li>• <i>This product is marketed with insecticidal, fungicidal, and plant regulator pesticide claims and is thereby subject to regulation under FIFRA. However, as noted below, it may be exempt from registration requirements if certain conditions at 40 C.F.R. § 152.6(f) are met, including labeling requirements. Currently those conditions have not been met, and the product as marketed is an unregistered pesticide being sold in violation of FIFRA.</i></li> <li>• Turf Formula is a scientifically balanced formula of ...and other natural growth supplements</li> <li>• Turf Formula increases sugar and protein content in leaf tissue</li> </ul>	Marketing materials for this product have been revised. See "Turf Formula" pdf file.





Product Name	Pesticidal Claims / Ingredients or Issue	Action Taken
	<ul style="list-style-type: none"> <li>Turf Formula improves the overall health of turf grass resulting in better resistance to insect and disease pressure</li> </ul>	
<p><b>Bountiful Harvest All Natural Bio-Stimulant</b></p> <p>(from Nov. 15, 2012 Notice of Warning)</p> <p>(from May 8, 2013 follow-up letter)</p>	<ul style="list-style-type: none"> <li>Contains ... natural growth stimulants</li> <li>Contains natural rooting hormones</li> <li>Stimulates massive root development</li> <li>Contains ... growth hormones</li> </ul> <ul style="list-style-type: none"> <li><i>This product is marketed with plant regulator pesticidal claims and is thereby subject to regulation under FIFRA.</i></li> <li>The name "Bio-Stimulant" itself indicates that the product is intended as a plant regulator as opposed to a fertilizer</li> <li>Applying Bountiful Harvest to the foliage increases photosynthesis and the plant's ability to metabolize carbohydrates, proteins, and other growth compounds contained in the leaves and transfer them to the root system. These compounds enter the soil to feed other microbes which produce growth hormones which are reabsorbed by the plant</li> </ul>	<p>The formulation of this product was changed to eliminate seaweed as a source of manitol and potassium. Further, the name of this product was changed and marketing materials for this product have been revised. See "Bountiful Harvest" pdf file.</p>



## Leshner, Mark

---

**From:** Leshner, Mark  
**Sent:** Wednesday, July 03, 2013 2:03 PM  
**To:** Wilkinson, Robert  
**Cc:** Dudding, Chris; Stephen Smith / Agri-Gro Marketing, Inc.; Leshner, Mark  
**Subject:** RE: Agri-Gro Marketing Inc. - Response to November 15, 2012 Notice of Warning

Dear Mr. Wilkinson,

Thank you for the attached letter from Mr. Stephen Smith, Agri-Gro Marketing Inc. and associated Agri-Gro.zip files. Unfortunately, EPA new e-mail/computer system cannot open or read these .zip files. Can you please send them in another format (suggest .doc, .docx or .pdf) so we may be able to complete our review. Once we are able to complete our review, we will contact you to discuss Agri-Gro Marketing's compliance actions.

Mark K. Leshner, M.S.  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
[lesher.mark@epa.gov](mailto:lesher.mark@epa.gov)

---

**From:** Wilkinson, Robert [<mailto:Robert.Wilkinson@huschblackwell.com>]  
**Sent:** Tuesday, July 02, 2013 4:06 PM  
**To:** Leshner, Mark  
**Cc:** Dudding, Chris  
**Subject:** Agri-Gro Marketing Inc. - Response to November 15, 2012 Notice of Warning

Please see the attached letter and attachments. The original letter has been placed in the mail.

Bob Wilkinson

**Robert F. Wilkinson**  
Partner

**HUSCH BLACKWELL LLP**  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105-3433  
Direct: 314.480.1842  
Fax: 314.480.1505  
[Robert.Wilkinson@huschblackwell.com](mailto:Robert.Wilkinson@huschblackwell.com)  
[huschblackwell.com](http://huschblackwell.com)  
[View Bio](#) | [View VCard](#)

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Agri-Gro Marketing, Inc.  
HC 4 Box 333  
Doniphan, MO 63935

July 1, 2013

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**VIA E-MAIL**

Mark K. Leshner  
FIFRA Enforcement Officer  
Toxics and Pesticides Branch  
US EPA Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

Re: Nov. 15, 2012 Notice of Warning

Dear Mark,

In response to the November 15, 2012 Notice of Warning and subsequent communications from your office (collectively, the "FIFRA Warning"), Agri-Gro Marketing, Inc. ("Agri-Gro") took its [agrigro.com](http://agrigro.com) and [bountiful-harvest.com](http://bountiful-harvest.com) webpages offline and revised its marketing materials to ensure compliance with FIFRA. The attached table explains how the items identified in the November 15, 2012 Notice of Warning and follow-up letter dated May 8, 2013 were addressed. Attached you will also find our revised marketing materials as well as copies showing the precise changes made to delete the erroneous descriptions identified in the FIFRA Warning.

As we have previously explained, Agri-Gro's products are plant nutritional supplements. These nutritional supplements are, essentially, non-conventional fertilizers that have soil amendment and plant nutrient product characteristics. The response of plants and crops to Agri-Gro products described in Agri-Gro's marketing materials results from better nutrition (by increasing availability of macro- and micro-nutrients, and improving soil permeability, etc.) rather than an alteration of the plant's behavior or action upon pests.

Because Agri-Gro products are intended only to support the growth of beneficial soil flora through improved nutrient availability so as to restore soil flora and physical conditions to more natural conditions not present in the extensively modified growing conditions of modern agriculture, and to support optimal plant health and development, our marketing materials were revised to better reflect this mode of action (improved nutrition) and delete extraneous information about secondary benefits which may be read to imply a pesticidal effect. For example, observations about the consequential decreased concentration of pathogenic bacteria as the number of beneficial bacteria increase have been deleted to avoid confusion about these products having a pesticidal effect, and observations about larger root mass have been revised to eliminate any confusion about these products having a growth stimulant effect and more accurately describe the observed differences as nutritional and physical in nature (i.e., improved

soil permeability addresses the physical constraints on root development presented by harder, untreated soil; root mass is proportionally larger in comparison with untreated plants, as treated plants are more nutritionally sound and, therefore, larger overall; and products contain micro-nutrients known to *support* robust plant growth and development).

In revising our marketing materials, we have attempted to eliminate any ambiguity in touting the mode of action and benefits of Agri-Gro products and we believe the revised Agri-Gro marketing materials more clearly and more accurately describe the non-pesticidal nature of these products. These documents have not been published to the internet or elsewhere and will not be used until we receive confirmation from your office that our changes address your concerns. Given that a significant portion of our business is internet-based, we would appreciate your prompt review and feedback on the revisions we have made. If additional changes are required, we would appreciate an opportunity to discuss alternative verbiage at your earliest convenience.

We trust that the revisions we have made to our marketing materials better reflect and convey the nutritional and physical mode of action of Agri-Gro's products. Please do not hesitate to call either me or our counsel, Robert Wilkinson, at (314) 480-1842 with any questions or concerns about the information above or the marketing document revisions.

Sincerely,



Stephen Smith  
President

Enclosures

cc: R. Wilkinson



**Table. 1. Actions Taken to Ensure Compliance with FIFRA**

Product Name	Pesticidal Claims / Ingredients or Issue	Action Taken
		General marketing materials, materials which relate to more than one product, and materials for products other than those identified in the Notice of Warning which referred to those identified in the Notice of Warning have been revised to reflect the changes noted below. See “General Marketing” pdf file.
<b>Agri-Gro Bio-Stimulant</b>  (from Nov. 15, 2012 Notice of Warning)	<ul style="list-style-type: none"> <li>• Agri-Gro is a natural bio-stimulant</li> <li>• Increased root development</li> <li>• Reduce Disease and Harmful Bacteria</li> <li>• Ability of this product to reduce diseases</li> <li>• Enhances the germination of most any seed and increases root growth and penetration by up to 50%</li> <li>• Provides ... other growth stimulants not found in ordinary fertilizers</li> <li>• Assists in seed germination and early plant growth</li> <li>• Improves development of root systems</li> <li>• The single greatest potential for Agri-Gro® may be in the control or reduction of this disease [Anthracnose], especially since there are few fungicides available that are effective in controlling it</li> <li>• Increase in root mass</li> </ul>	Marketing materials for this product have been permanently removed. This product is no longer in production.

Product Name	Pesticidal Claims / Ingredients or Issue	Action Taken
<b>Foliar Blend Bio-Stimulant</b>  (from Nov. 15, 2012 Notice of Warning)	<ul style="list-style-type: none"> <li>• Establish larger root systems with stronger stalks</li> <li>• Improves germination, plant emergence and promotes vigorous root growth up to 50%</li> <li>• Elevates the plants' natural defense mechanisms</li> <li>• Minimizing disease, insect pressure and weather-related stress</li> <li>• Reduction in fungicide use by 50% or more</li> <li>• Increased root development</li> <li>• Less disease and insect pressure</li> <li>• Minimize disease and soil borne pathogens</li> <li>• Improves development of root system</li> <li>• Suppresses soil borne pathogens</li> <li>• Supplies ... power growth stimulants</li> <li>• Elevate the plant's natural defense system against a range of disease causing fungi, bacteria and viruses</li> <li>• Reduce the impact of insect damage on crops</li> <li>• Contains natural plant growth stimulants that trigger root growth and development</li> <li>• Levels of Fusarium colonization lowered by 66% (soybeans) 48% (corn)</li> <li>• Less symptoms of rice tungro virus &amp; raggedstunt virus</li> </ul>	The name of this product was changed and marketing materials for this product have been revised. See "Foliar Blend" pdf file.
<b>Foliar Blend Nutritional Plant Supplement</b>  (from May 8, 2013 follow-up letter)	<ul style="list-style-type: none"> <li>• <i>This product is marketed with insecticidal, fungicidal, and plant regulator pesticide claims and is thereby subject to regulation under FIFRA.</i></li> <li>• Foliar Blend simply helps your crop...by...supporting a healthy, disease suppressive growing environment</li> <li>• Crops treated with Foliar Blend...experience less disease pressure</li> <li>• Minimize disease, insect pressure</li> <li>• This brings to light another advantage of</li> </ul>	Marketing materials for this product have been revised. See "Foliar Blend" pdf file.

Product Name	Pesticidal Claims / Ingredients or Issue	Action Taken
	<p>FoliarBlend, the ability to minimize disease and soil borne pathogens</p> <ul style="list-style-type: none"> <li>• Foliar Blend can help the plant hang on to more flowers or kernels</li> <li>• Growth stimulants found in FoliarBlend enhance photosynthesis and the plant's ability to provide carbohydrates, proteins and other growth compounds</li> <li>• Elevating the plant's natural defense system against a range of disease causing fungi, bacteria and viruses</li> <li>• May reduce the impact of insect damage on crops</li> <li>• Improves photosynthesis</li> <li>• Supplies essential plant nutrition, improving plant health and natural resistance to disease, pests and stress</li> <li>• The ingredients in FoliarBlend elevate the plant's natural defense system prior to any period of stress</li> </ul>	
<p><b>IgniteS2</b> (from Nov. 15, 2012 Notice of Warning)</p> <p>(from May 8, 2013 follow-up letter)</p>	<ul style="list-style-type: none"> <li>• Contains ... plant stimulants not found in ordinary fertilizers</li> <li>• Increases ... root growth, ... and lowers disease pressure</li> <li>• Establish larger root systems with stronger stalks</li> </ul> <ul style="list-style-type: none"> <li>• <i>This product is marketed with insecticidal, fungicidal, and plant regulator pesticide claims and is thereby subject to regulation under FIFRA.</i></li> <li>• Help plants...overcome stress from weather, disease</li> <li>• Crops treated with IgniteS<sup>2®</sup> are healthier and experience less disease pressure</li> <li>• Support the plant's natural defense system</li> <li>• Germination and early plant development is significantly improved</li> <li>• Improves natural resistance to pests</li> </ul>	<p>Marketing materials for this product have been revised. See "IgniteS2" pdf file.</p>

Product Name	Pesticidal Claims / Ingredients or Issue	Action Taken
	<ul style="list-style-type: none"> <li>• IgniteS<sup>2</sup> significantly increases root growth...on soybeans</li> <li>• Corn Research - IgniteS<sup>2</sup> treated plots had lower levels of Fusarium colonization...Fusarium colonization is an indicator of the potential fungal infection of roots, which can lead to disease. ...aiding in the suppression of fungal pathogens</li> <li>• Soybean Research - IgniteS<sup>2</sup> treated plots had lower levels of Fusarium colonization...Fusarium colonization is an indicator of the potential fungal infection of roots, which can lead to disease. ...aiding in the suppression of fungal pathogens</li> </ul>	
<b>Turf Formula Nutrient Activator</b>  (from Nov. 15, 2012 Notice of Warning)	<ul style="list-style-type: none"> <li>• A scientifically balanced formula of micro-nutrients, carbohydrates, enzymes, amino acids, stabilized oxygen, and other growth stimulants</li> <li>• Turf Formula Bio-Stimulant Nutrient Activator boosts both plant and root growth</li> <li>• Increases root mass and penetration</li> </ul>	The name of this product was changed and marketing materials for this product have been revised. See "Turf Formula" pdf file.
<b>Turf Formula Nutritional Plant Supplement</b>  (from May 8, 2013 follow-up letter)	<ul style="list-style-type: none"> <li>• <i>This product is marketed with insecticidal, fungicidal, and plant regulator pesticide claims and is thereby subject to regulation under FIFRA. However, as noted below, it may be exempt from registration requirements if certain conditions at 40 C.F.R. § 152.6(f) are met, including labeling requirements. Currently those conditions have not been met, and the product as marketed is an unregistered pesticide being sold in violation of FIFRA.</i></li> <li>• Turf Formula is a scientifically balanced formula of ...and other natural growth supplements</li> <li>• Turf Formula increases sugar and protein content in leaf tissue</li> </ul>	Marketing materials for this product have been revised. See "Turf Formula" pdf file.

Product Name	Pesticidal Claims / Ingredients or Issue	Action Taken
	<ul style="list-style-type: none"> <li>• Turf Formula improves the overall health of turf grass resulting in better resistance to insect and disease pressure</li> </ul>	
<p><b>Bountiful Harvest All Natural Bio-Stimulant</b></p> <p>(from Nov. 15, 2012 Notice of Warning)</p> <p>(from May 8, 2013 follow-up letter)</p>	<ul style="list-style-type: none"> <li>• Contains ... natural growth stimulants</li> <li>• Contains natural rooting hormones</li> <li>• Stimulates massive root development</li> <li>• Contains ... growth hormones</li> </ul> <ul style="list-style-type: none"> <li>• <i>This product is marketed with plant regulator pesticidal claims and is thereby subject to regulation under FIFRA.</i></li> <li>• The name “Bio-Stimulant” itself indicates that the product is intended as a plant regulator as opposed to a fertilizer</li> <li>• Applying Bountiful Harvest to the foliage increases photosynthesis and the plant’s ability to metabolize carbohydrates, proteins, and other growth compounds contained in the leaves and transfer them to the root system. These compounds enter the soil to feed other microbes which produce growth hormones which are reabsorbed by the plant</li> </ul>	<p>The formulation of this product was changed to eliminate seaweed as a source of manitol and potassium. Further, the name of this product was changed and marketing materials for this product have been revised. See “Bountiful Harvest” pdf file.</p>



## Lesher, Mark

---

**To:** Tim @ Agri-Gro Marketing, Inc  
**Cc:** Stephen Smith / Agri-Gro Marketing, Inc.; Dudding, Chris; Teter, Royan  
**Subject:** RE: Agri-Gro

Dear Mr. Tesreau and Mr. Smith:

As we discussed today by telephone, your steps to achieve compliance with FIFRA are acceptable and your requested extension to July 2, 2013, is granted.

Have a safe and Memorial Day weekend.

Mark K. Lesher, M.S.  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
[lesher.mark@epa.gov](mailto:lesher.mark@epa.gov)

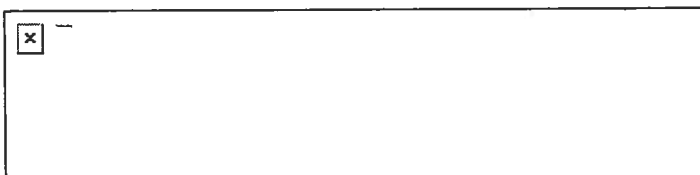
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**From:** Tim @ Agri-Gro Marketing, Inc [<mailto:tim@agrigro.com>]  
**Sent:** Thursday, May 23, 2013 10:48 AM  
**To:** Lesher, Mark  
**Cc:** Stephen Smith / Agri-Gro Marketing, Inc.  
**Subject:** Agri-Gro

Hello Mark,

As per our phone call this morning, we are taking down our website today until such time as our regulatory consultants from Husch & Blackwell law firm in St Louis, Mo can make it comply with FIFRA. In light of this, we are requesting an extension till July 2 in order to prepare a detailed response covering each item that is changed by our counsel to eliminate any possible FIFRA violation in our current marketing material and also allow time for our web service to make the necessary changes recommended by our recently retained firm for your approval. Please advise if this is acceptable and requested extension can be granted.

Best regards



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\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*

## Leshher, Mark

---

**From:** Teter, Royan  
**Sent:** Thursday, May 23, 2013 4:59 PM  
**To:** Leshher, Mark  
**Subject:** RE: Agri-Gro

Sounds reasonable.

Royan W. Teter, Chief  
Pesticides Section  
U.S. EPA - Region 7  
WWPD/TOPE/PEST  
11201 Renner Boulevard  
Lenexa, KS 66219

(913) 551-7609 (p)  
(913) 551-9609 (f)

---

**From:** Leshher, Mark  
**Sent:** Thursday, May 23, 2013 11:29 AM  
**To:** Teter, Royan  
**Cc:** Dudding, Chris  
**Subject:** FW: Agri-Gro

Royan,

Chris & I had a conference call with Agri-Gro Marketing, Inc., Doniphan, MO this morning and they finally seem to understand the FIFRA violations involving PGRs addressed in our NOW. They have hired regulatory consultants from a law firm in St. Louis, MO, that have convinced them they really are out of compliance with FIFRA and will help them achieve compliance. They have agreed to shut down their website until compliance is documented. They are requesting an extension to July 2, 2013. (See e-mail below). Chris & I think this is appropriate. If compliance is not reached by July 2, 2013, we feel it is time for a SSURO and a possible inspection and issuance of civil complaint. Are you OK with granting an extension until July 2, 2013? Any other thoughts?

Mark

Mark K. Leshher, M.S.  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
[lesher.mark@epa.gov](mailto:lesher.mark@epa.gov)

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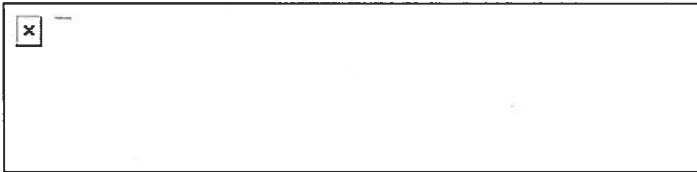
**From:** Tim @ Agri-Gro Marketing, Inc [<mailto:tim@agrigro.com>]  
**Sent:** Thursday, May 23, 2013 10:48 AM

**To:** Leshner, Mark  
**Cc:** Stephen Smith / Agri-Gro Marketing, Inc.  
**Subject:** Agri-Gro

Hello Mark,

As per our phone call this morning, we are taking down our website today until such time as our regulatory consultants from Husch & Blackwell law firm in St Louis, Mo can make it comply with FIFRA. In light of this, we are requesting an extension till July 2 in order to prepare a detailed response covering each item that is changed by our counsel to eliminate any possible FIFRA violation in our current marketing material and also allow time for our web service to make the necessary changes recommended by our recently retained firm for your approval. Please advise if this is acceptable and requested extension can be granted.

Best regards



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\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*

## Leshner, Mark

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**From:** Leshner, Mark  
**Sent:** Monday, May 20, 2013 3:52 PM  
**To:** 'Tim @ Agri-Gro Marketing, Inc'; 'Stephen Smith'  
**Cc:** Dudding, Chris; Leshner, Mark  
**Subject:** RE: conference call

Tracking:	Recipient	Delivery	Read
	'Tim @ Agri-Gro Marketing, Inc'		
	'Stephen Smith'		
	Dudding, Chris	Delivered: 5/20/2013 3:52 PM	
	Leshner, Mark	Delivered: 5/20/2013 3:52 PM	Read: 5/20/2013 4:35 PM

Thank you for your emailed questions.

We do not question your claim that various ingredients in your products induce physiological responses in plants, as you have documented by various materials that you have supplied.

However, please understand that a claim that a product is intended, through physiological action, to alter the behavior of plants, goes beyond a claim of mere nutritional impact to a plant regulator impact. A plant regulator falls within the definition of the term "pesticide" as defined by the Federal Insecticide, Fungicide, and Rodenticide Act, and as such is required to be registered with the EPA in order to be legally sold, unless otherwise exempt.

To use your example of a product that may result in increased root growth, to the extent that the product is being sold as a product that increases root growth, it is being sold as a plant regulator. As noted above, a plant regulator is a pesticide. It is true that certain products that may have some plant regulator properties may be exempt from regulation as a pesticide if intended for use as a nutrient, and not as a plant regulator; however, a product that is being marketed with claims to alter the behavior of plants – such as increasing root growth or inducing bloom set – is clearly being marketed with plant regulator claims and must be registered with the EPA as a pesticide, unless otherwise exempt.

If you wish to market your product as a plant regulator, and the ingredient that induces the behavioral change is mycorrhizal fungus, then the mycorrhizal fungus might be considered the active ingredient. However, if you intend your product be sold as a nutrient, are not making plant regulator claims in conjunction with its sale or distribution, and the product ingredients have clear nutrient value, then the product might be exempt from regulation as a pesticide. As an example, sulfur which has known antifungal properties can be sold as an active ingredient in some pesticides marketed as a fungicide. Sulfur also can be an active ingredient in a soil amendment to lower the pH of the soil to raise blueberries. It is sold as a soil amendment, not a pesticide and would not require registration as a pesticide, if it's only claim is to lower the soil's pH. It is all in how a product is marketed (it's intent of use).

We are looking forward to our conference call on Thursday and hope we can resolve these issues and achieve compliance with FIFRA for your products.

Mark K. Leshner, M.S.  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054

lesher.mark@epa.gov

---

**From:** Tim @ Agri-Gro Marketing, Inc [mailto:tim@agrigro.com]  
**Sent:** Monday, May 20, 2013 12:37 PM  
**To:** Leshner, Mark  
**Subject:** RE: conference call

Mark,

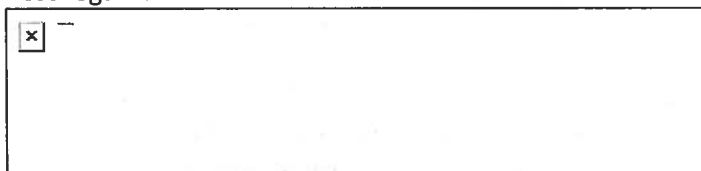
With regard to the conference call. Some of the items we wish to address are questions and issues raised and contained in our response letters of January and February. One question that I feel needs an honest answer. Has anyone in your office or department taken the time to read or review any of the nutritional research material that has been referenced or presented? Do you have access to or tried to acquire a copy of "Mineral Nutrition and Plant Disease" by The American Phytopathological Society edited by Datnoff, Elmer and Huber first printed in 2007 ? We have provided much scientific evidence of mineral and plant responses in accepted peer reviewed scientific publications. Does your office acknowledge this research?

In our last letter Stephen asked " For example ; if it is not permissible for us to say, " increased root growth", despite the evidence that our products contain zinc and mycorrhizae fungi which are known to "increase root growth", then how can we reword such statements to be in compliance yet still state this growth response as all other suppliers of these inputs do?

If we are forced to register as a pesticide to comply with FIFRA what would you have us identify as the active ingredient ? We have no pesticidal ingredients only plant food. Would it help to send your office samples for analysis?

These are just a sample of the questions we would like to address Thursday.

Best regards



---

**From:** Leshner, Mark [mailto:Leshner.Mark@epa.gov]  
**Sent:** Thursday, May 16, 2013 3:22 PM  
**To:** Tim @ Agri-Gro Marketing, Inc; Stephen Smith  
**Cc:** Dudding, Chris; Leshner, Mark  
**Subject:** RE: conference call

Dear Mr. Tesreau and Mr. Smith:

We are available for a conference call on next Thursday May 23, 2013, at 10:00 am. However, so that we may most effectively answer any questions that you may have regarding your required response, due May 20, 2013, please provide your questions to us in advance of the call, by no later than Tuesday, May 21. If you wish to request an extension of time until May 30, 2013, to provide the required written response containing detailed compliance information for each of the identified products, please do so by that date, with an explanation of the need for such extension.

As noted in previous correspondence, the sale, distribution, or offering for sale or distribution of unregistered pesticide products that are not otherwise exempt from FIFRA constitutes a violation of the statute. Failure to correct the

identified violations of FIFRA may result in further enforcement including assessment of civil penalties up to \$7,500 per violation.

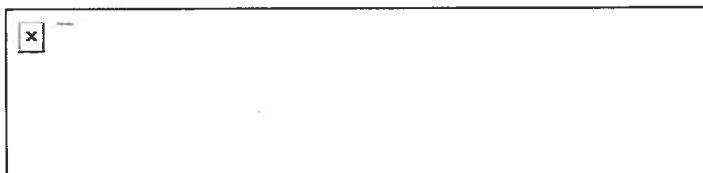
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11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
[lesher.mark@epa.gov](mailto:lesher.mark@epa.gov)

---

**From:** Tim @ Agri-Gro Marketing, Inc [<mailto:tim@agrigro.com>]  
**Sent:** Thursday, May 16, 2013 11:14 AM  
**To:** Leshner, Mark  
**Subject:** conference call

Hello Mark,

Stephen and I have been out of the office and just read your letter dated May 8 th. Due to the short time period we would like to setup a conference call the latter part of next week to discuss additional items. Tentatively 10:00 AM next Thursday the 23<sup>rd</sup> if this would work with your schedule or the following day at the same time. 573-996-5422 would be the best call in number.



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## **Leshner, Mark**

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**From:** Tim @ Agri-Gro Marketing, Inc [tim@agrigro.com]  
**Sent:** Monday, May 20, 2013 12:37 PM  
**To:** Leshner, Mark  
**Subject:** RE: conference call  
**Attachments:** ATT00001.txt

Mark,

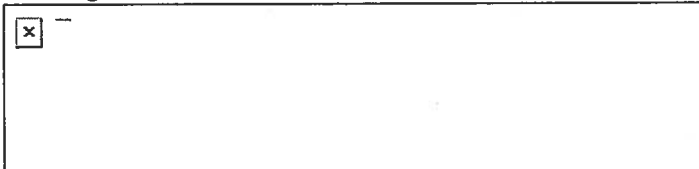
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These are just a sample of the questions we would like to address Thursday.

Best regards



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**From:** Leshner, Mark [mailto:Leshner.Mark@epa.gov]  
**Sent:** Thursday, May 16, 2013 3:22 PM  
**To:** Tim @ Agri-Gro Marketing, Inc; Stephen Smith  
**Cc:** Dudding, Chris; Leshner, Mark  
**Subject:** RE: conference call

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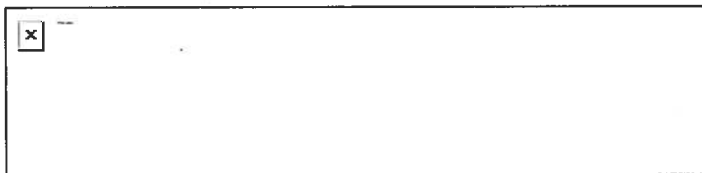
Mark K. Leshner, M.S.  
Environmental Scientist  
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Water, Wetlands, and Pesticides Division  
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11201 Renner Boulevard  
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913-551-7054  
[lesher.mark@epa.gov](mailto:lesher.mark@epa.gov)

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**From:** Tim @ Agri-Gro Marketing, Inc [<mailto:tim@agrigro.com>]  
**Sent:** Thursday, May 16, 2013 11:14 AM  
**To:** Leshner, Mark  
**Subject:** conference call

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## Lesher, Mark

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**From:** Lesher, Mark  
**Sent:** Thursday, May 16, 2013 3:22 PM  
**To:** Tim @ Agri-Gro Marketing, Inc; Stephen Smith  
**Cc:** Dudding, Chris; Lesher, Mark  
**Subject:** RE: conference call

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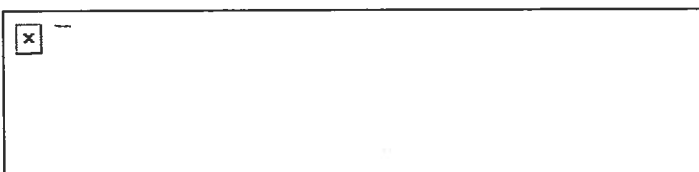
Mark K. Lesher, M.S.  
Environmental Scientist  
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**Sent:** Thursday, May 16, 2013 11:14 AM  
**To:** Lesher, Mark  
**Subject:** conference call

Hello Mark,

Stephen and I have been out of the office and just read your letter dated May 8 th. Due to the short time period we would like to setup a conference call the latter part of next week to discuss additional items. Tentatively 10:00 AM next Thursday the 23<sup>rd</sup> if this would work with your schedule or the following day at the same time. 573-996-5422 would be the best call in number.



\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*

This Email message contained an attachment named  
image001.jpg

which may be a computer program. This attached computer program could contain a computer virus which could cause harm to EPA's computers, network, and data. The attachment has been deleted.

This was done to limit the distribution of computer viruses introduced into the EPA network. EPA is deleting all computer program attachments sent from the Internet into the agency via Email.

If the message sender is known and the attachment was legitimate, you should contact the sender and request that they rename the file name extension and resend the Email with the renamed attachment. After receiving the revised Email, containing the renamed attachment, you can rename the file extension to its correct name.

For further information, please contact the EPA Call Center at (866) 411-4EPA (4372). The TDD number is (866) 489-4900.

\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*

MAY 08 2013

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Article Number: 7011 0470 0002 2746 5835

Mr. Steven Smith  
President  
Agro-Gro Marketing, Inc.  
HC 4 Box 333  
Doniphan, Missouri 63935

Dear Mr. Smith:

On April 26, 2013, the EPA received your e-mail outlining your company's response to our November 15, 2012, Notice of Warning which referenced amendments to the Agri-Gro websites to address the FIFRA violations identified in the NOW. We have completed our review of the Agri-Gro websites and while we recognize that you have made some changes to address pesticidal claims identified in the NOW and in our subsequent communications with you, but multiple products that are not registered as pesticides with the EPA continue to be marketed with pesticidal claims in violation of FIFRA. The table below notes examples of pesticidal claims/ingredients associated with or an issue we have identified for each product as they are currently being marketed on the Agri-Gro websites. Please note, this table lists a representative sampling only of our website review of claims or issues that indicate that the products are illegal pesticides, and is not intended to be exhaustive:

CONCURRENCE:H:\WWPD\TOPE\2012 Correspondence\Leshner\Letter to AgriGro Marketing, Inc. - Doniphan, MO - 5-7-13: SDK - 7848 - 5-7-13					
NAME	Leshner	Teter			
BRANCH	TOPE/PEST	TOPE/PEST			
SIGN	mark Leshner	REB			
DATE	5/7/13	5/7/13			

Product Name	Pesticidal Claims/Ingredients or Issue
Foliar Blend Nutritional Plant Supplement	<ul style="list-style-type: none"><li>• This product is marketed with insecticidal, fungicidal, and plant regulator pesticide claims and is thereby subject to regulation under FIFRA.</li><li>• Foliar Blend simply helps your crop ... by ... supporting a healthy, disease suppressive growing environment</li><li>• Crops treated with Foliar Blend ... experience less disease pressure.</li><li>• Minimizing disease, insect pressure</li><li>• This brings to light another advantage of FoliarBlend, the ability to minimize disease and soil borne pathogens</li><li>• Foliar Blend can help the plant hang on to more flowers or kernels</li><li>• Growth stimulants found in FoliarBlend enhance photosynthesis and the plant's ability to provide carbohydrates, proteins and other growth compounds.</li></ul>

8105 8 0 YAM

	<ul style="list-style-type: none"> <li>elevating the plant's natural defense system against a range of disease causing fungi, bacteria and viruses.</li> <li>May reduce the impact of insect damage on crops.</li> <li>Improves photosynthesis.</li> <li>Supplies essential plant nutrition, improving plant health and natural resistance to disease, pests and stress.</li> <li>The ingredients in FoliarBlend elevate the plant's natural defense system prior to any period of stress.</li> </ul>
IgniteS <sup>2</sup>	<ul style="list-style-type: none"> <li><i>This product is marketed with insecticidal, fungicidal, and plant regulator pesticide claims and is thereby subject to regulation under FIFRA.</i></li> <li>Help plants...overcome stress from weather, disease</li> <li>Crops treated with IgniteS<sup>2</sup>@ are healthier and experience less disease pressure.</li> <li>Support the plant's natural defense system</li> <li>Germination and early plant development is significantly improved</li> <li>Improves natural resistance to pests</li> <li>Ignites<sup>2</sup> significantly increases root growth...on soybeans</li> <li>Corn Research – IgniteS<sup>2</sup> treated plots had lower levels of Fusarium colonization...Fusarium colonization is an indicator of the potential fungal infection of roots, which can lead to disease. ...aiding in the suppression of fungal pathogens</li> <li>Soybean Research – IgniteS<sup>2</sup> treated plots had lower levels of Fusarium colonization...Fusarium colonization is an indicator of the potential fungal infection of roots, which can lead to disease. ...aiding in the suppression of fungal pathogens</li> </ul>
Turf Formula Nutritional Plant Supplement	<ul style="list-style-type: none"> <li><i>This product is marketed with insecticidal, fungicidal, and plant regulator pesticide claims and is thereby subject to regulation under FIFRA. However, as noted below, it may be exempt from registration requirements if certain conditions at 40 C.F.R. § 152.6(f) are met, including labeling requirements. Currently those conditions have not been met, and the product as marketed is an unregistered pesticide being sold in violation of FIFRA.</i></li> <li>Turf Formula is a scientifically balanced formula of ...and other natural growth supplements.</li> <li>Turf Formula increases sugar and protein content in leaf tissue.</li> <li>Turf Formula improves the overall health of turf grass resulting in better resistance to insect and disease pressure.</li> </ul>
Bountiful Harvest All Natural Bio- Stimulant	<ul style="list-style-type: none"> <li><i>This product is marketed with plant regulator pesticidal claims and is thereby subject to regulation under FIFRA.</i></li> <li>The name "Bio-Stimulant" itself indicates that the product is intended as a plant regulator as opposed to a fertilizer.</li> <li>Applying Bountiful Harvest to the foliage increases photosynthesis and the plant's ability to metabolize carbohydrates, proteins, and other growth compounds contained in the leaves and transfer them to the root system. These compounds enter the soil to feed other microbes which produce growth hormones which are reabsorbed by the plant.</li> </ul>

As stated in the Notice of Warning, FIFRA defines a pesticide as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant. Marketing a product as "plant stimulant" or "growth stimulant" or with claims to accelerate or retard the growth of particular parts of a plant (e.g., roots or stalks) or to impact germination rates are indications that a product is intended as a plant regulator, and thus is regulated as a



pesticide, as opposed to a general nutrient or fertilizer. Similarly, claims that a product increases resistance to disease or increases a plant's defense systems are indicators of a product's fungicidal intent. Unless exempt, products that are plant regulators or fungicides are subject to registration under FIFRA. In a nutshell, you cannot sell or distribute a product which affects a certain part of a plant or specific plant function or has a pesticide function (minimizes or reduces disease or pest pressures), unless it is registered as a pesticide with the EPA.

As we discussed in our telephone conversation on February 14, 2013, your Bio Turf Formula product may be exempt from the FIFRA registration requirements as a "vitamin hormone product" as referenced at the regulation at 40 C.F.R. § 152.6(f). That regulation states that certain products consisting of a mixture of plant hormones and nutrients are "vitamin hormone products" that are not considered to be plant regulators as defined under Section 2(v) of FIFRA, provided certain criteria are met, including that the product is not intended for use on food crop sites, and is **labeled accordingly**. Since the Bio Turf Formula product is not clearly identified on its label as not intended for use on food crop sites, it currently is not exempt from regulation under FIFRA as a vitamin hormone product.

As noted in our letter of February 1, 2013, and as further explained in our telephone conversation, the insertion of a disclaimer statement where a product is being marketed with pesticidal claims or which includes pesticidal active ingredients in its formula is insufficient to remove or exempt such a product from regulation under FIFRA. Regardless of a product's formula, the marketing of a product with pesticidal claims such as "contains natural rooting hormones," "minimizes disease and soil borne pathogens," "provides other growth stimulants not found in ordinary fertilizers," "increases root mass," and the other examples listed in the November 15, 2012, Notice of Warning, would subject a product to regulation as a pesticide under FIFRA.

**To address the violations identified in the Notice of Warning, please submit, by no later than May 20, 2013, for each of the products identified in the Notice of Warning, a signed statement explaining the actions that you have taken to ensure compliance with FIFRA. Such actions may include removal of the product as currently formulated from your catalog and advertising pending registration as a pesticide with the EPA, revision of your website and marketing materials (including labeling) for the product to ensure that pesticidal claims are removed, reformulation of the product to remove any ingredients intended as pesticidal, and/or, in the case of vitamin hormone products not intended for use on food crops, appropriate relabeling to comply with the exemption described at 40 C.F.R. § 152.6(f).**

The sale, distribution, or offering for sale or distribution of unregistered pesticide products that are not otherwise exempt from FIFRA constitutes a violation of the statute. Failure to correct the identified violations of FIFRA may result in further enforcement including assessment of civil penalties up to \$7,500 per violation.

Your prompt attention to this matter is appreciated. If you have further questions, or would like to set up another conference call to discuss (please provide a date, time and telephone number), please do not hesitate to contact me at [lesher.mark@epa.gov](mailto:lesher.mark@epa.gov), or at (913) 551-7054.

Sincerely,

Mark K. Leshner

FIFRA Enforcement Officer  
Toxics and Pesticides Branch

cc: Paul Bailey, Missouri Department of Agriculture, (e-copy).  
Tim Tesreau, Registered Agent, Agri-Gro Marketing, Inc., HC 4 Box 333,  
Doniphan, MO, 63935

bcc: Doug Jones, EPA Missouri Project Officer, (e-copy).  
Chris Dudding, EPA Region 7 Office of Regional Counsel, (e-copy).  
Company File, Agri-Gro Marketing, Inc., Doniphan, MO, Co. No. None.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7**

11201 Renner Boulevard  
Lenexa, Kansas 66219

**MAY 08 2013**

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

Article Number: 7011 0470 0002 2746 5835

Mr. Steven Smith  
President  
Agro-Gro Marketing, Inc.  
HC 4 Box 333  
Doniphan, Missouri 63935

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<b>Product Name</b>	<b>Pesticidal Claims/Ingredients or Issue</b>
<b>Foliar Blend Nutritional Plant Supplement</b>	<ul style="list-style-type: none"><li>• <i>This product is marketed with insecticidal, fungicidal, and plant regulator pesticide claims and is thereby subject to regulation under FIFRA.</i></li><li>• Foliar Blend simply helps your crop... by ...supporting a healthy, disease suppressive growing environment</li><li>• Crops treated with Foliar Blend... experience less disease pressure.</li><li>• Minimizing disease, insect pressure</li><li>• This brings to light another advantage of FoliarBlend, the ability to minimize disease and soil borne pathogens</li><li>• Foliar Blend can help the plant hang on to more flowers or kernels</li><li>• Growth stimulants found in FoliarBlend enhance photosynthesis and the plant's ability to provide carbohydrates, proteins and other growth compounds.</li><li>• elevating the plant's natural defense system against a range of disease causing fungi, bacteria and viruses.</li><li>• May reduce the impact of insect damage on crops.</li><li>• Improves photosynthesis.</li><li>• Supplies essential plant nutrition, improving plant health and natural resistance to disease, pests and stress.</li><li>• The ingredients in FoliarBlend elevate the plant's natural defense system prior to any period of stress.</li></ul>

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Sincerely,

*Mark K. Lesher*

Mark K. Lesher  
FIFRA Enforcement Officer  
Toxics and Pesticides Branch

cc: Paul Bailey, Missouri Department of Agriculture, (e-copy).  
Tim Tesreau, Registered Agent, Agri-Gro Marketing, Inc., HC 4 Box 333,  
Doniphan, MO, 63935

7011 0470 0002 2746 5835

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**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
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Total Postage: Mr. Steven Smith  
 President  
 Agro-Gro Marketing, Inc.  
 HC 4 Box 333  
 Doniphan, MO 63935

Sent To  
 Street, Apt  
 or PO Box  
 City, State

PS Form 3800, August 2006

See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Mr. Steven Smith  
 President  
 Agro-Gro Marketing, Inc.  
 HC 4 Box 333  
 Doniphan, MO 63935

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 X *Licky Lesreau* ☐ Agent  
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

**3. Service Type**

- ☒ Certified Mail ☐ Express Mail  
☐ Registered ☒ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number  
 (Transfer from service label)

7011 0470 0002 2746 5835

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

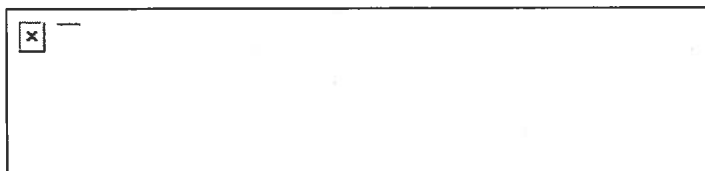
## Leshner, Mark

---

**From:** Stephen Smith [Stephen@agrigro.com]  
**Sent:** Wednesday, March 20, 2013 9:21 AM  
**To:** Leshner, Mark  
**Subject:** RE: Response to your March 1, 2013 letter  
**Attachments:** ATT00001.txt

Thank You Mark,

We will do our best to have this issue addressed prior to the May, 1 2013 deadline.



This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

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**From:** Leshner, Mark [mailto:Leshner.Mark@epa.gov]  
**Sent:** Monday, March 18, 2013 11:13 AM  
**To:** Stephen Smith  
**Cc:** Teter, Royan; Leshner, Mark  
**Subject:** RE: Response to your March 1, 2013 letter

Dear Mr. Smith,

We have reviewed your March 14, 2013, e-mail and grant your request for a deadline of May 1, 2013. That being said, to address the violations identified in the Notice of Warning, please submit, by no later than May 1, 2013, for each of the products identified in the Notice of Warning, a signed statement explaining the actions that you have taken to ensure compliance with FIFRA. Such actions may include removal of the product as currently formulated from your catalog and advertising pending registration as a pesticide with the EPA, revision of your website and marketing materials for the product to ensure that pesticidal claims are removed, reformulation of the product to remove any ingredients intended as pesticidal, and/or, in the case of vitamin hormone products not intended for use on food crops, appropriate relabeling to comply with the exemption described at 40 C.F.R. § 152.6(f). If during this process, you have any questions or concerns, please contact me. We look forward to seeing your formal response on or before May 1, 2013.

Mark K. Leshner  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
lesher.mark@epa.gov

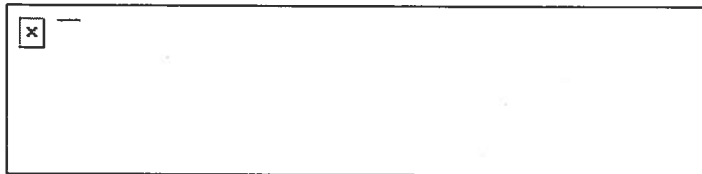
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**From:** Stephen Smith [mailto:Stephen@agrigro.com]  
**Sent:** Friday, March 15, 2013 7:43 AM  
**To:** Leshner, Mark  
**Subject:** RE: Response to your March 1, 2013 letter

Thank You Mark,

Stopped by the office this morning before leaving for the funeral. No hard feelings here. The good thing is we were able to address your concerns and respond in a timely manner although I do apologize for not being more professional in my response and appreciate your understanding.

Have a good weekend and we will await your reply after you have had time to consider our response.



This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

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**From:** Leshner, Mark [mailto:Leshner.Mark@epa.gov]  
**Sent:** Thursday, March 14, 2013 4:49 PM  
**To:** Stephen Smith  
**Cc:** Teter, Royan; Dudding, Chris  
**Subject:** RE: Response to your March 1, 2013 letter  
**Importance:** High

Dear Mr. Smith,

I am sorry I was not able to respond to you sooner, as was trying to get approval from my supervisor to grant your request for an extension and he was busy yesterday and out of the regional office today. We are sorry to hear about your daughter's illness and understand the stress it has caused for you and your family. We will review your responses in red below and get back to you on the proposed May 1, 2013, deadline date, asap. Again, I am sorry for not getting back to you sooner and thank you for your efforts to respond to EPA before March 15, 2013.

Mark K. Leshner  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
[lesher.mark@epa.gov](mailto:lesher.mark@epa.gov)

---

**From:** Stephen Smith [mailto:Stephen@agrigro.com]  
**Sent:** Thursday, March 14, 2013 4:03 PM



**To:** Leshner, Mark

**Subject:** RE: Response to your March 1, 2013 letter

Dear Mr. Leshner,

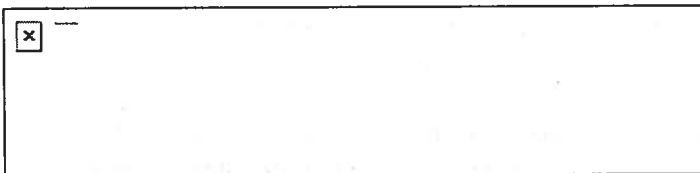
Since I did not received a response from you requesting an extension to respond to your March 1, letter and having to attend the funeral of a close family friend tomorrow, I will address your letter below with my response highlighted in red for the sake of time. I apologize my response could not be more professional but given the time constraints to work with and the personal issues our family has had to contend with since my daughters illness, I wanted to make sure my reply reached you by the requested due date of tomorrow, March 15, 2013.

As you will see below, we are striving to be compliant and taking serious measures to address your concerns to keep us compliant and in good standing with the requirements of FIFRA. Upon your approval of the actions below, we will begin work immediately to correct and address the remaining concerns your letters have raised. We would ask that you allow us to complete these actions by no later than May, 1, 2013.

Again, it is our full intention to have these actions completed and submitted to you for review much sooner and we will certainly strive to have these actions completed well before the May, 1, 2013 deadline.

The actions below will no doubt place us at a serious disadvantage in the market place compared to other companies selling competing/similar products in nature and could result in a significant negative financial impact on our business. Our products are not pesticidal in nature or composition, yet we are treated as though we are a pesticide and restricted from making the claims that "all" other sellers of macro and micro-nutrients are making to sell their products to the ag market here in the US and abroad. Our previous attempts to explain our products claims and mode of action as nutritional, not pesticidal, have been for the most part, overlooked and were never acknowledged or addressed in your letter of March 1. Therefore, we know of no other actions to take at this time other than the following which we have outlined below. Additionally, we have submitted our products, labels, supporting literature and websites to the EPA for review as to their status and are waiting on a ruling from them.

We trust these actions will meet FIFRA's expectations and await your response.



This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

---

**From:** Leshner, Mark [<mailto:Leshner.Mark@epa.gov>]

**Sent:** Friday, March 01, 2013 4:41 PM

**To:** [Stephen@agrigro.com](mailto:Stephen@agrigro.com)

**Cc:** Leshner, Mark; Dudding, Chris; Teter, Royan

**Subject:** Response to your February 22, 2013, e-mail to EPA

Dear Mr. Smith:

On February 22, 2013, I received an email from you in response to letter of February 1, 2013, in which we had specified information to be supplied by Agri-Gro Marketing, Inc. (Agri-Gro) in order to address the violations identified in the Notice of Warning issued to Agri-Gro on November 15, 2012. In your email, you explain your company's position, provide various attachments (including labels for your products), and request for further compliance assistance. From our review of your email and attached documents, in addition to your company's websites, it appears that multiple violations remain which must be addressed in order for Agri-Gro to be in compliance with FIFRA.

From an additional review of your websites: <http://www.agrigro.com> and <http://www.bountiful-harvest.com>, it appears that multiple products continue to be marketed with pesticidal claims and/or include pesticidal active ingredients, as noted in the Notice of Warning. For example, the Ignites2 product webpage shows that the product is being marketed as a pesticide as that term is defined by the FIFRA statute, in that the website and the brochure linked therein make plant regulator claims including "contains ... plant stimulants," "increases root growth," and "establish[es] larger root systems with stronger stalks." You may find further examples of such claims listed in the Notice of Warning.

As you are aware, since you first contacted our company in late 2012, we have made numerous changes to our company's website to address the points of concern you have raised involving the products we manufacture and the wording we use when promoting them to the general public. We have even gone as far as to add a disclaimer statement to ensure that anyone reading our website are clear on the products, their role in agronomy and the mode of action they involve. As has been stated in all of our previous responses, all of the products manufactured by Agri-Gro Marketing, Inc. are 100% free of any pesticidal active ingredients. The claims we make are based upon the nutritional response they provide to both the targeted plants and soil environment. While we have attempted to explain this by providing written explanations of our products mode of action, the ingredients used, peer reviewed research and universally accepted data, it has obviously fallen short of your expectations. Reading your response to the information we have provided, we can only assume that FIFRA's guidelines leave no room for differentiating a plant growth effect from a nutritional response versus a pesticidal response. Therefore until we can receive further clarification on this matter or obtain EPA exemption for our products, the only option we see at this time is to remove all of the questionable wording in their entirety from our website and any accompanying written literature published involving the products we manufacture.

With that being said, all wording listed on our website, regardless of the product in question, stating claims as follows: including "contains ... plant stimulants," "increases root growth," and "establish[es] larger root systems with stronger stalks." Will be removed from our companies <http://www.agrigro.com> and <http://www.bountiful-harvest.com> websites as required by FIFRA. Furthermore, we will begin to take measures to reprint all supporting literature and remove such claims and wording from any printed material involving all products manufactured by Agri-Gro Marketing, Inc.

As stated in the Notice of Warning, FIFRA defines a pesticide as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant. Marketing a product as "plant stimulant" or "growth stimulant" or with claims to accelerate or retard the growth of particular parts of a plant (e.g., roots or stalks) or to impact germination rates are indications that a product is intended as a plant regulator, and thus is regulated as a pesticide, as opposed to a general nutrient or fertilizer. Similarly, claims that a product increases resistance to disease or increases a plant's defense systems are indicators of a product's fungicidal intent. Unless exempt, products that are plant regulators or fungicides are subject to registration under FIFRA.

Agri-Gro Marketing, Inc. does not manufacture any plant regulators or fungicides as defined by FIFRA nor do any of our products contain pesticidal ingredients. Any wording that exist on our companies websites and written literature that represent our products as a "plant stimulant" or "growth stimulant" or claims to accelerate or retard the growth of particular parts of a plant (e.g., roots or stalks) or to impact germination rates, will be removed as required by FIFRA.

As we discussed in our telephone conversation on February 14, 2013, your Bio Turf Formula product may be exempt from the FIFRA registration requirements as a "vitamin hormone product" as referenced at the regulation at 40 C.F.R. § 152.6(f). That regulation states that certain products consisting of a mixture of plant hormones and nutrients are "vitamin hormone products" that are not considered to be plant regulators as defined under Section 2(v) of FIFRA, provided certain criteria are met, including that the product is not intended for use on food crop sites, and is labeled accordingly. Since the Bio Turf Formula product is not clearly identified on its label as not intended for use on food crop sites, it currently is not exempt from regulation under FIFRA as a vitamin hormone product. The Turf Formula product will not qualify as a vitamin hormone product as the product does not contain nor claim to contain on the label, any plant growth hormones or plant growth regulators. Turf Formula is a mixture of chelated micro-nutrients, Macro-nutrients, humic acids and mycorrhizal fungi. As stated above, any pesticidal claims that exist on our company's website or printed material involving Turf Formula will be removed so that no confusion or misunderstandings exist involving the Turf Formula product, its intended use and proper application. All claims and instructions for use made on the company website, product label and written literature for the Turf Formula product are specific to the use on Turf Grass production only.

As noted in our letter of February 1, 2013, and as further explained in our telephone conversation, the insertion of a disclaimer statement where a product is being marketed with pesticidal claims or which includes pesticidal active ingredients in its formula is insufficient to remove or exempt such a product from regulation under FIFRA. Regardless of a product's formula, the marketing of a product with pesticidal claims such as "contains natural rooting hormones," "minimizes disease and soil borne pathogens," "provides other growth stimulants not found in ordinary fertilizers," "increases root mass," and the other examples listed in the November 15, 2012, Notice of Warning, would subject a product to regulation as a pesticide under FIFRA. We understand the disclaimer in and of itself is insufficient to remove or exempt any of our companies products from regulation under FIFRA. However, in an effort to ensure the public consumer is clear in their understanding of our products and their intended use, we will keep the disclaimer in place as a safeguard for all who may view our website and research our products. Furthermore, any claims that could be considered "pesticidal in nature that exist on our website and company literature such as "contains natural rooting hormones," "minimizes disease and soil borne pathogens," "provides other growth "stimulants" not found in ordinary fertilizers," "increases root mass," etc. will be removed as required by FIFRA.

To address the violations identified in the Notice of Warning, please submit, by no later than March 15, 2013, for each of the products identified in the Notice of Warning, a signed statement explaining the actions that you have taken to ensure compliance with FIFRA. Such actions may include removal of the product as currently formulated from your catalog and advertising pending registration as a pesticide with the EPA, revision of your website and marketing materials for the product to ensure that pesticidal claims are removed, reformulation of the product to remove any ingredients intended as pesticidal, and/or, in the case of vitamin hormone products not intended for use on food crops, appropriate relabeling to comply with the exemption described at 40 C.F.R. § 152.6(f). Based upon the above intended actions and your approval of such, we will take the described actions to address the concerns your letters have raised. Since our products do not contain any pesticidal ingredients, we will not be reformulating any of our products in question. Our companies websites and marketing materials will be revised to remove all claims that could be considered pesticidal in nature as required in your letters by FIFRA.

The sale, distribution, or offering for sale or distribution of unregistered pesticide products that are not otherwise exempt from FIFRA constitutes a violation of the statute. Failure to correct the identified violations of FIFRA may result in further enforcement including assessment of civil penalties up to \$7,500 per violation.

Your prompt attention to this matter is appreciated. If you have further questions, or would like to set up another conference call next week to discuss (please provide a date, time and telephone number) please do not hesitate to contact me at [lesher.mark@epa.gov](mailto:lesher.mark@epa.gov) or at 913-551-7054.

Mark K. Lesher  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
[lesher.mark@epa.gov](mailto:lesher.mark@epa.gov)

\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*

This Email message contained an attachment named  
image001.jpg  
which may be a computer program. This attached computer program could  
contain a computer virus which could cause harm to EPA's computers,  
network, and data. The attachment has been deleted.

This was done to limit the distribution of computer viruses introduced  
into the EPA network. EPA is deleting all computer program attachments  
sent from the Internet into the agency via Email.

If the message sender is known and the attachment was legitimate, you  
should contact the sender and request that they rename the file name  
extension and resend the Email with the renamed attachment. After  
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\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*



**Leshher, Mark**

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**From:** Leshher, Mark  
**Sent:** Monday, March 18, 2013 11:13 AM  
**To:** Stephen Smith  
**Cc:** Teter, Royan; Leshher, Mark  
**Subject:** RE: Response to your March 1, 2013 letter

Dear Mr. Smith,

We have reviewed your March 14, 2013, e-mail and grant your request for a deadline of May 1, 2013. That being said, to address the violations identified in the Notice of Warning, please submit, by no later than May 1, 2013, for each of the products identified in the Notice of Warning, a signed statement explaining the actions that you have taken to ensure compliance with FIFRA. Such actions may include removal of the product as currently formulated from your catalog and advertising pending registration as a pesticide with the EPA, revision of your website and marketing materials for the product to ensure that pesticidal claims are removed, reformulation of the product to remove any ingredients intended as pesticidal, and/or, in the case of vitamin hormone products not intended for use on food crops, appropriate relabeling to comply with the exemption described at 40 C.F.R. § 152.6(f). If during this process, you have any questions or concerns, please contact me. We look forward to seeing your formal response on or before May 1, 2013.

Mark K. Leshher  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
lesher.mark@epa.gov

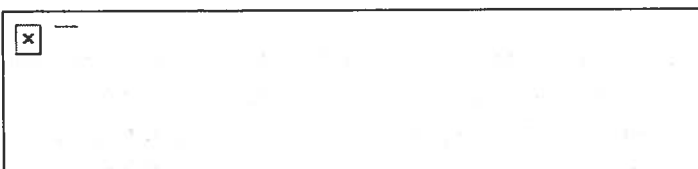
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**From:** Stephen Smith [mailto:Stephen@agrigo.com]  
**Sent:** Friday, March 15, 2013 7:43 AM  
**To:** Leshher, Mark  
**Subject:** RE: Response to your March 1, 2013 letter

Thank You Mark,

Stopped by the office this morning before leaving for the funeral. No hard feelings here. The good thing is we were able to address your concerns and respond in a timely manner although I do apologize for not being more professional in my response and appreciate your understanding.

Have a good weekend and we will await your reply after you have had time to consider our response.



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**From:** Leshner, Mark [<mailto:Leshner.Mark@epa.gov>]  
**Sent:** Thursday, March 14, 2013 4:49 PM  
**To:** Stephen Smith  
**Cc:** Teter, Royan; Dudding, Chris  
**Subject:** RE: Response to your March 1, 2013 letter  
**Importance:** High

Dear Mr. Smith,

I am sorry I was not able to respond to you sooner, as was trying to get approval from my supervisor to grant your request for an extension and he was busy yesterday and out of the regional office today. We are sorry to hear about your daughter's illness and understand the stress it has caused for you and your family. We will review your responses in red below and get back to you on the proposed May 1, 2013, deadline date, asap. Again, I am sorry for not getting back to you sooner and thank you for your efforts to respond to EPA before March 15, 2013.

Mark K. Leshner  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
[lesher.mark@epa.gov](mailto:lesher.mark@epa.gov)

---

**From:** Stephen Smith [<mailto:Stephen@agrigro.com>]  
**Sent:** Thursday, March 14, 2013 4:03 PM  
**To:** Leshner, Mark  
**Subject:** RE: Response to your March 1, 2013 letter

Dear Mr. Leshner,

Since I did not received a response from you requesting an extension to respond to your March 1, letter and having to attend the funeral of a close family friend tomorrow, I will address your letter below with my response highlighted in red for the sake of time. I apologize my response could not be more professional but given the time constraints to work with and the personal issues our family has had to contend with since my daughters illness, I wanted to make sure my reply reached you by the requested due date of tomorrow, March 15, 2013.

As you will see below, we are striving to be compliant and taking serious measures to address your concerns to keep us compliant and in good standing with the requirements of FIFRA. Upon your approval of the actions below, we will begin work immediately to correct and address the remaining concerns your letters have raised. We would ask that you allow us to complete these actions by no later than May, 1, 2013.

Again, it is our full intention to have these actions completed and submitted to you for review much sooner and we will certainly strive to have these actions completed well before the May, 1, 2013 deadline.



The actions below will no doubt place us at a serious disadvantage in the market place compared to other companies selling competing/similar products in nature and could result in a significant negative financial impact on our business. Our products are not pesticidal in nature or composition, yet we are treated as though we are a pesticide and restricted from making the claims that "all" other sellers of macro and micro-nutrients are making to sell their products to the ag market here in the US and abroad. Our previous attempts to explain our products claims and mode of action as nutritional, not pesticidal, have been for the most part, overlooked and were never acknowledged or addressed in your letter of March 1. Therefore, we know of no other actions to take at this time other than the following which we have outlined below. Additionally, we have submitted our products, labels, supporting literature and websites to the EPA for review as to their status and are waiting on a ruling from them.

We trust these actions will meet FIFRA's expectations and await your response.



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**From:** Leshner, Mark [<mailto:Leshner.Mark@epa.gov>]  
**Sent:** Friday, March 01, 2013 4:41 PM  
**To:** [Stephen@agrigro.com](mailto:Stephen@agrigro.com)  
**Cc:** Leshner, Mark; Dudding, Chris; Teter, Royan  
**Subject:** Response to your February 22, 2013, e-mail to EPA

Dear Mr. Smith:

On February 22, 2013, I received an email from you in response to letter of February 1, 2013, in which we had specified information to be supplied by Agri-Gro Marketing, Inc. (Agri-Gro) in order to address the violations identified in the Notice of Warning issued to Agri-Gro on November 15, 2012. In your email, you explain your company's position, provide various attachments (including labels for your products), and request for further compliance assistance. From our review of your email and attached documents, in addition to your company's websites, it appears that multiple violations remain which must be addressed in order for Agri-Gro to be in compliance with FIFRA.

From an additional review of your websites: <http://www.agrigro.com> and <http://www.bountiful-harvest.com>, it appears that multiple products continue to be marketed with pesticidal claims and/or include pesticidal active ingredients, as noted in the Notice of Warning. For example, the Ignites2 product webpage shows that the product is being marketed as a pesticide as that term is defined by the FIFRA statute, in that the website and the brochure linked therein make plant regulator claims including "contains ... plant stimulants," "increases root growth," and "establish[es] larger root systems with stronger stalks." You may find further examples of such claims listed in the Notice of Warning.

As you are aware, since you first contacted our company in late 2012, we have made numerous changes to our company's website to address the points of concern you have raised involving the products we manufacture and the wording we use when promoting them to the general public. We have even gone as far as to add a disclaimer statement to ensure that anyone reading our website are clear on the products, their role in agronomy and the mode of action they involve. As has been stated in all of our previous responses, all of the products manufactured by Agri-Gro Marketing, Inc. are 100% free of any pesticidal active

ingredients. The claims we make are based upon the nutritional response they provide to both the targeted plants and soil environment. While we have attempted to explain this by providing written explanations of our products mode of action, the ingredients used, peer reviewed research and universally accepted data, it has obviously fallen short of your expectations. Reading your response to the information we have provided, we can only assume that FIFRA's guidelines leave no room for differentiating a plant growth effect from a nutritional response versus a pesticidal response. Therefore until we can receive further clarification on this matter or obtain EPA exemption for our products, the only option we see at this time is to remove all of the questionable wording in their entirety from our website and any accompanying written literature published involving the products we manufacture.

With that being said, all wording listed on our website, regardless of the product in question, stating claims as follows: including "contains ... plant stimulants," "increases root growth," and "establish[es] larger root systems with stronger stalks." Will be removed from our companies <http://www.agrigro.com> and <http://www.bountiful-harvest.com> websites as required by FIFRA. Furthermore, we will begin to take measures to reprint all supporting literature and remove such claims and wording from any printed material involving all products manufactured by Agri-Gro Marketing, Inc.

As stated in the Notice of Warning, FIFRA defines a pesticide as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant. Marketing a product as "plant stimulant" or "growth stimulant" or with claims to accelerate or retard the growth of particular parts of a plant (e.g., roots or stalks) or to impact germination rates are indications that a product is intended as a plant regulator, and thus is regulated as a pesticide, as opposed to a general nutrient or fertilizer. Similarly, claims that a product increases resistance to disease or increases a plant's defense systems are indicators of a product's fungicidal intent. Unless exempt, products that are plant regulators or fungicides are subject to registration under FIFRA. Agri-Gro Marketing, Inc. does not manufacture any plant regulators or fungicides as defined by FIFRA nor do any of our products contain pesticidal ingredients. Any wording that exist on our companies websites and written literature that represent our products as a "plant stimulant" or "growth stimulant" or claims to accelerate or retard the growth of particular parts of a plant (e.g., roots or stalks) or to impact germination rates, will be removed as required by FIFRA.

As we discussed in our telephone conversation on February 14, 2013, your Bio Turf Formula product may be exempt from the FIFRA registration requirements as a "vitamin hormone product" as referenced at the regulation at 40 C.F.R. § 152.6(f). That regulation states that certain products consisting of a mixture of plant hormones and nutrients are "vitamin hormone products" that are not considered to be plant regulators as defined under Section 2(v) of FIFRA, provided certain criteria are met, including that the product is not intended for use on food crop sites, and is labeled accordingly. Since the Bio Turf Formula product is not clearly identified on its label as not intended for use on food crop sites, it currently is not exempt from regulation under FIFRA as a vitamin hormone product. The Turf Formula product will not qualify as a vitamin hormone product as the product does not contain nor claim to contain on the label, any plant growth hormones or plant growth regulators. Turf Formula is a mixture of chelated micro-nutrients, Macro-nutrients, humic acids and mycorrhizal fungi. As stated above, any pesticidal claims that exist on our company's website or printed material involving Turf Formula will be removed so that no confusion or misunderstandings exist involving the Turf Formula product, its intended use and proper application. All claims and instructions for use made on the company website, product label and written literature for the Turf Formula product are specific to the use on Turf Grass production only.

As noted in our letter of February 1, 2013, and as further explained in our telephone conversation, the insertion of a disclaimer statement where a product is being marketed with pesticidal claims or which includes pesticidal active ingredients in its formula is insufficient to remove or exempt such a product from regulation under FIFRA. Regardless of a product's formula, the marketing of a product with pesticidal claims such as "contains natural rooting hormones," "minimizes disease and soil borne pathogens," "provides other growth stimulants not found in ordinary fertilizers,"

"increases root mass," and the other examples listed in the November 15, 2012, Notice of Warning, would subject a product to regulation as a pesticide under FIFRA. We understand the disclaimer in and of itself is insufficient to remove or exempt any of our companies products from regulation under FIFRA. However, in an effort to ensure the public consumer is clear in their understanding of our products and their intended use, we will keep the disclaimer in place as a safeguard for all who may view our website and research our products. Furthermore, any claims that could be considered "pesticidal in nature that exist on our website and company literature such as "contains natural rooting hormones," "minimizes disease and soil borne pathogens," "provides other growth "stimulants" not found in ordinary fertilizers," "increases root mass," etc. will be removed as required by FIFRA.

To address the violations identified in the Notice of Warning, please submit, by no later than March 15, 2013, for each of the products identified in the Notice of Warning, a signed statement explaining the actions that you have taken to ensure compliance with FIFRA. Such actions may include removal of the product as currently formulated from your catalog and advertising pending registration as a pesticide with the EPA, revision of your website and marketing materials for the product to ensure that pesticidal claims are removed, reformulation of the product to remove any ingredients intended as pesticidal, and/or, in the case of vitamin hormone products not intended for use on food crops, appropriate relabeling to comply with the exemption described at 40 C.F.R. § 152.6(f). Based upon the above intended actions and your approval of such, we will take the described actions to address the concerns your letters have raised. Since our products do not contain any pesticidal ingredients, we will not be reformulating any of our products in question. Our companies websites and marketing materials will be revised to remove all claims that could be considered pesticidal in nature as required in your letters by FIFRA.

The sale, distribution, or offering for sale or distribution of unregistered pesticide products that are not otherwise exempt from FIFRA constitutes a violation of the statute. Failure to correct the identified violations of FIFRA may result in further enforcement including assessment of civil penalties up to \$7,500 per violation.

Your prompt attention to this matter is appreciated. If you have further questions, or would like to set up another conference call next week to discuss (please provide a date, time and telephone number) please do not hesitate to contact me at [lesher.mark@epa.gov](mailto:lesher.mark@epa.gov) or at 913-551-7054.

Mark K. Lesher  
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U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
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\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*

## Leshner, Mark

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**From:** Stephen Smith [Stephen@agrigro.com]  
**Sent:** Friday, March 15, 2013 7:43 AM  
**To:** Leshner, Mark  
**Subject:** RE: Response to your March 1, 2013 letter  
**Attachments:** ATT00001.txt

Thank You Mark,

Stopped by the office this morning before leaving for the funeral. No hard feelings here. The good thing is we were able to address your concerns and respond in a timely manner although I do apologize for not being more professional in my response and appreciate your understanding.

Have a good weekend and we will await your reply after you have had time to consider our response.



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---

**From:** Leshner, Mark [mailto:Leshner.Mark@epa.gov]  
**Sent:** Thursday, March 14, 2013 4:49 PM  
**To:** Stephen Smith  
**Cc:** Teter, Royan; Dudding, Chris  
**Subject:** RE: Response to your March 1, 2013 letter  
**Importance:** High

Dear Mr. Smith,

I am sorry I was not able to respond to you sooner, as was trying to get approval from my supervisor to grant your request for an extension and he was busy yesterday and out of the regional office today. We are sorry to hear about your daughter's illness and understand the stress it has caused for you and your family. We will review your responses in **red** below and get back to you on the proposed May 1, 2013, deadline date, asap. Again, I am sorry for not getting back to you sooner and thank you for your efforts to respond to EPA before March 15, 2013.

Mark K. Leshner  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
lesher.mark@epa.gov

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**Sent:** Thursday, March 14, 2013 4:03 PM  
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**Subject:** RE: Response to your March 1, 2013 letter

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**From:** Leshner, Mark [mailto:Leshner.Mark@epa.gov]  
**Sent:** Friday, March 01, 2013 4:41 PM  
**To:** Stephen@agrigro.com  
**Cc:** Leshner, Mark; Dudding, Chris; Teter, Royan  
**Subject:** Response to your February 22, 2013, e-mail to EPA



As we discussed in our telephone conversation on February 14, 2013, your Bio Turf Formula product may be exempt from the FIFRA registration requirements as a "vitamin hormone product" as referenced at the regulation at 40 C.F.R. § 152.6(f). That regulation states that certain products consisting of a mixture of plant hormones and nutrients are "vitamin hormone products" that are not considered to be plant regulators as defined under Section 2(v) of FIFRA, provided certain criteria are met, including that the product is not intended for use on food crop sites, and is labeled accordingly. Since the Bio Turf Formula product is not clearly identified on its label as not intended for use on food crop sites, it currently is not exempt from regulation under FIFRA as a vitamin hormone product. **The Turf Formula product will not qualify as a vitamin hormone product as the product does not contain nor claim to contain on the label, any plant growth hormones or plant growth regulators. Turf Formula is a mixture of chelated micro-nutrients, Macro-nutrients, humic acids and mycorrhizal fungi. As stated above, any pesticidal claims that exist on our company's website or printed material involving Turf Formula will be removed so that no confusion or misunderstandings exist involving the Turf Formula product, its intended use and proper application. All claims and instructions for use made on the company website, product label and written literature for the Turf Formula product are specific to the use on Turf Grass production only.**

As noted in our letter of February 1, 2013, and as further explained in our telephone conversation, the insertion of a disclaimer statement where a product is being marketed with pesticidal claims or which includes pesticidal active ingredients in its formula is insufficient to remove or exempt such a product from regulation under FIFRA. Regardless of a product's formula, the marketing of a product with pesticidal claims such as "contains natural rooting hormones," "minimizes disease and soil borne pathogens," "provides other growth stimulants not found in ordinary fertilizers," "increases root mass," and the other examples listed in the November 15, 2012, Notice of Warning, would subject a product to regulation as a pesticide under FIFRA. **We understand the disclaimer in and of itself is insufficient to remove or exempt any of our companies products from regulation under FIFRA. However, in an effort to ensure the public consumer is clear in their understanding of our products and their intended use, we will keep the disclaimer in place as a safeguard for all who may view our website and research our products. Furthermore, any claims that could be considered "pesticidal in nature that exist on our website and company literature such as "contains natural rooting hormones," "minimizes disease and soil borne pathogens," "provides other growth "stimulants" not found in ordinary fertilizers," "increases root mass," etc. will be removed as required by FIFRA.**

To address the violations identified in the Notice of Warning, please submit, by no later than March 15, 2013, for each of the products identified in the Notice of Warning, a signed statement explaining the actions that you have taken to ensure compliance with FIFRA. Such actions may include removal of the product as currently formulated from your catalog and advertising pending registration as a pesticide with the EPA, revision of your website and marketing materials for the product to ensure that pesticidal claims are removed, reformulation of the product to remove any ingredients intended as pesticidal, and/or, in the case of vitamin hormone products not intended for use on food crops, appropriate relabeling to comply with the exemption described at 40 C.F.R. § 152.6(f). **Based upon the above intended actions and your approval of such, we will take the described actions to address the concerns your letters have raised. Since our products do not contain any pesticidal ingredients, we will not be reformulating any of our products in question. Our companies websites and marketing materials will be revised to remove all claims that could be considered pesticidal in nature as required in your letters by FIFRA.**

The sale, distribution, or offering for sale or distribution of unregistered pesticide products that are not otherwise exempt from FIFRA constitutes a violation of the statute. Failure to correct the identified violations of FIFRA may result in further enforcement including assessment of civil penalties up to \$7,500 per violation.

Dear Mr. Smith:

On February 22, 2013, I received an email from you in response to letter of February 1, 2013, in which we had specified information to be supplied by Agri-Gro Marketing, Inc. (Agri-Gro) in order to address the violations identified in the Notice of Warning issued to Agri-Gro on November 15, 2012. In your email, you explain your company's position, provide various attachments (including labels for your products), and request for further compliance assistance. From our review of your email and attached documents, in addition to your company's websites, it appears that multiple violations remain which must be addressed in order for Agri-Gro to be in compliance with FIFRA.

From an additional review of your websites: <http://www.agrigro.com> and <http://www.bountiful-harvest.com>, it appears that multiple products continue to be marketed with pesticidal claims and/or include pesticidal active ingredients, as noted in the Notice of Warning. For example, the Ignites2 product webpage shows that the product is being marketed as a pesticide as that term is defined by the FIFRA statute, in that the website and the brochure linked therein make plant regulator claims including "contains ... plant stimulants," "increases root growth," and "establish[es] larger root systems with stronger stalks." You may find further examples of such claims listed in the Notice of Warning.

As you are aware, since you first contacted our company in late 2012, we have made numerous changes to our company's website to address the points of concern you have raised involving the products we manufacture and the wording we use when promoting them to the general public. We have even gone as far as to add a disclaimer statement to ensure that anyone reading our website are clear on the products, their role in agronomy and the mode of action they involve. As has been stated in all of our previous responses, all of the products manufactured by Agri-Gro Marketing, Inc. are 100% free of any pesticidal active ingredients. The claims we make are based upon the nutritional response they provide to both the targeted plants and soil environment. While we have attempted to explain this by providing written explanations of our products mode of action, the ingredients used, peer reviewed research and universally accepted data, it has obviously fallen short of your expectations. Reading your response to the information we have provided, we can only assume that FIFRA's guidelines leave no room for differentiating a plant growth effect from a nutritional response versus a pesticidal response. Therefore until we can receive further clarification on this matter or obtain EPA exemption for our products, the only option we see at this time is to remove all of the questionable wording in their entirety from our website and any accompanying written literature published involving the products we manufacture.

With that being said, all wording listed on our website, regardless of the product in question, stating claims as follows: including "contains ... plant stimulants," "increases root growth," and "establish[es] larger root systems with stronger stalks." Will be removed from our companies <http://www.agrigro.com> and <http://www.bountiful-harvest.com> websites as required by FIFRA. Furthermore, we will begin to take measures to reprint all supporting literature and remove such claims and wording from any printed material involving all products manufactured by Agri-Gro Marketing, Inc.

As stated in the Notice of Warning, FIFRA defines a pesticide as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant. Marketing a product as "plant stimulant" or "growth stimulant" or with claims to accelerate or retard the growth of particular parts of a plant (e.g., roots or stalks) or to impact germination rates are indications that a product is intended as a plant regulator, and thus is regulated as a pesticide, as opposed to a general nutrient or fertilizer. Similarly, claims that a product increases resistance to disease or increases a plant's defense systems are indicators of a product's fungicidal intent. Unless exempt, products that are plant regulators or fungicides are subject to registration under FIFRA.

Agri-Gro Marketing, Inc. does not manufacture any plant regulators or fungicides as defined by FIFRA nor do any of our products contain pesticidal ingredients. Any wording that exist on our companies websites and written literature that represent our products as a "plant stimulant" or "growth stimulant" or claims to accelerate or retard the growth of particular parts of a plant (e.g., roots or stalks) or to impact germination rates, will be removed as required by FIFRA.



Your prompt attention to this matter is appreciated. If you have further questions, or would like to set up another conference call next week to discuss (please provide a date, time and telephone number) please do not hesitate to contact me at [lesher.mark@epa.gov](mailto:lesher.mark@epa.gov) or at 913-551-7054.

Mark K. Lesher  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
[lesher.mark@epa.gov](mailto:lesher.mark@epa.gov)

\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*

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image001.jpg  
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network, and data. The attachment has been deleted.

This was done to limit the distribution of computer viruses introduced  
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should contact the sender and request that they rename the file name  
extension and resend the Email with the renamed attachment. After  
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rename the file extension to its correct name.

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## **Leshner, Mark**

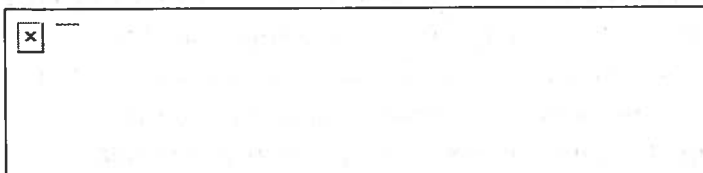
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**From:** Stephen Smith [Stephen@agrigo.com]  
**Sent:** Friday, March 15, 2013 7:43 AM  
**To:** Leshner, Mark  
**Subject:** RE: Response to your March 1, 2013 letter  
**Attachments:** ATT00001.txt

Thank You Mark,

Stopped by the office this morning before leaving for the funeral. No hard feelings here. The good thing is we were able to address your concerns and respond in a timely manner although I do apologize for not being more professional in my response and appreciate your understanding.

Have a good weekend and we will await your reply after you have had time to consider our response.



This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

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**From:** Leshner, Mark [mailto:Leshner.Mark@epa.gov]  
**Sent:** Thursday, March 14, 2013 4:49 PM  
**To:** Stephen Smith  
**Cc:** Teter, Royan; Dudding, Chris  
**Subject:** RE: Response to your March 1, 2013 letter  
**Importance:** High

Dear Mr. Smith,

I am sorry I was not able to respond to you sooner, as was trying to get approval from my supervisor to grant your request for an extension and he was busy yesterday and out of the regional office today. We are sorry to hear about your daughter's illness and understand the stress it has caused for you and your family. We will review your responses in red below and get back to you on the proposed May 1, 2013, deadline date, asap. Again, I am sorry for not getting back to you sooner and thank you for your efforts to respond to EPA before March 15, 2013.

Mark K. Leshner  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
lesher.mark@epa.gov

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**From:** Stephen Smith [mailto:Stephen@agrigro.com]  
**Sent:** Thursday, March 14, 2013 4:03 PM  
**To:** Leshner, Mark  
**Subject:** RE: Response to your March 1, 2013 letter

Dear Mr. Leshner,

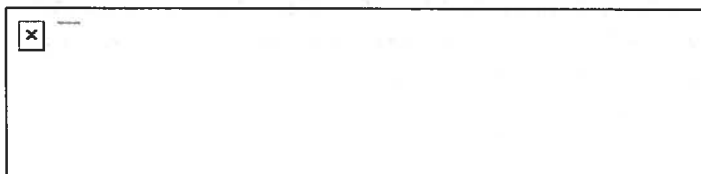
Since I did not received a response from you requesting an extension to respond to your March 1, letter and having to attend the funeral of a close family friend tomorrow, I will address your letter below with my response highlighted in red for the sake of time. I apologize my response could not be more professional but given the time constraints to work with and the personal issues our family has had to contend with since my daughters illness, I wanted to make sure my reply reached you by the requested due date of tomorrow, March 15, 2013.

As you will see below, we are striving to be compliant and taking serious measures to address your concerns to keep us compliant and in good standing with the requirements of FIFRA. Upon your approval of the actions below, we will begin work immediately to correct and address the remaining concerns your letters have raised. We would ask that you allow us to complete these actions by no later than May, 1, 2013.

Again, it is our full intention to have these actions completed and submitted to you for review much sooner and we will certainly strive to have these actions completed well before the May, 1, 2013 deadline.

The actions below will no doubt place us at a serious disadvantage in the market place compared to other companies selling competing/similar products in nature and could result in a significant negative financial impact on our business. Our products are not pesticidal in nature or composition, yet we are treated as though we are a pesticide and restricted from making the claims that "all" other sellers of macro and micro-nutrients are making to sell their products to the ag market here in the US and abroad. Our previous attempts to explain our products claims and mode of action as nutritional, not pesticidal, have been for the most part, overlooked and were never acknowledged or addressed in your letter of March 1. Therefore, we know of no other actions to take at this time other than the following which we have outlined below. Additionally, we have submitted our products, labels, supporting literature and websites to the EPA for review as to their status and are waiting on a ruling from them.

We trust these actions will meet FIFRA's expectations and await your response.



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**From:** Leshner, Mark [mailto:Leshner.Mark@epa.gov]  
**Sent:** Friday, March 01, 2013 4:41 PM  
**To:** Stephen@agrigro.com  
**Cc:** Leshner, Mark; Dudding, Chris; Teter, Royan  
**Subject:** Response to your February 22, 2013, e-mail to EPA

Dear Mr. Smith:

On February 22, 2013, I received an email from you in response to letter of February 1, 2013, in which we had specified information to be supplied by Agri-Gro Marketing, Inc. (Agri-Gro) in order to address the violations identified in the Notice of Warning issued to Agri-Gro on November 15, 2012. In your email, you explain your company's position, provide various attachments (including labels for your products), and request for further compliance assistance. From our review of your email and attached documents, in addition to your company's websites, it appears that multiple violations remain which must be addressed in order for Agri-Gro to be in compliance with FIFRA.

From an additional review of your websites: <http://www.agrigro.com> and <http://www.bountiful-harvest.com>, it appears that multiple products continue to be marketed with pesticidal claims and/or include pesticidal active ingredients, as noted in the Notice of Warning. For example, the Ignites2 product webpage shows that the product is being marketed as a pesticide as that term is defined by the FIFRA statute, in that the website and the brochure linked therein make plant regulator claims including "contains ... plant stimulants," "increases root growth," and "establish[es] larger root systems with stronger stalks." You may find further examples of such claims listed in the Notice of Warning.

As you are aware, since you first contacted our company in late 2012, we have made numerous changes to our company's website to address the points of concern you have raised involving the products we manufacture and the wording we use when promoting them to the general public. We have even gone as far as to add a disclaimer statement to ensure that anyone reading our website are clear on the products, their role in agronomy and the mode of action they involve. As has been stated in all of our previous responses, all of the products manufactured by Agri-Gro Marketing, Inc. are 100% free of any pesticidal active ingredients. The claims we make are based upon the nutritional response they provide to both the targeted plants and soil environment. While we have attempted to explain this by providing written explanations of our products mode of action, the ingredients used, peer reviewed research and universally accepted data, it has obviously fallen short of your expectations. Reading your response to the information we have provided, we can only assume that FIFRA's guidelines leave no room for differentiating a plant growth effect from a nutritional response versus a pesticidal response. Therefore until we can receive further clarification on this matter or obtain EPA exemption for our products, the only option we see at this time is to remove all of the questionable wording in their entirety from our website and any accompanying written literature published involving the products we manufacture.

With that being said, all wording listed on our website, regardless of the product in question, stating claims as follows: including "contains ... plant stimulants," "increases root growth," and "establish[es] larger root systems with stronger stalks." Will be removed from our companies <http://www.agrigro.com> and <http://www.bountiful-harvest.com> websites as required by FIFRA. Furthermore, we will begin to take measures to reprint all supporting literature and remove such claims and wording from any printed material involving all products manufactured by Agri-Gro Marketing, Inc.

As stated in the Notice of Warning, FIFRA defines a pesticide as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant. Marketing a product as "plant stimulant" or "growth stimulant" or with claims to accelerate or retard the growth of particular parts of a plant (e.g., roots or stalks) or to impact germination rates are indications that a product is intended as a plant regulator, and thus is regulated as a pesticide, as opposed to a general nutrient or fertilizer. Similarly, claims that a product increases resistance to disease or increases a plant's defense systems are indicators of a product's fungicidal intent. Unless exempt, products that are plant regulators or fungicides are subject to registration under FIFRA.

Agri-Gro Marketing, Inc. does not manufacture any plant regulators or fungicides as defined by FIFRA nor do any of our products contain pesticidal ingredients. Any wording that exist on our companies websites and written literature that represent our products as a "plant stimulant" or "growth stimulant" or claims to accelerate or retard the growth of particular parts of a plant (e.g., roots or stalks) or to impact germination rates, will be removed as required by FIFRA.

As we discussed in our telephone conversation on February 14, 2013, your Bio Turf Formula product may be exempt from the FIFRA registration requirements as a "vitamin hormone product" as referenced at the regulation at 40 C.F.R. § 152.6(f). That regulation states that certain products consisting of a mixture of plant hormones and nutrients are "vitamin hormone products" that are not considered to be plant regulators as defined under Section 2(v) of FIFRA, provided certain criteria are met, including that the product is not intended for use on food crop sites, and is labeled accordingly. Since the Bio Turf Formula product is not clearly identified on its label as not intended for use on food crop sites, it currently is not exempt from regulation under FIFRA as a vitamin hormone product. The Turf Formula product will not qualify as a vitamin hormone product as the product does not contain nor claim to contain on the label, any plant growth hormones or plant growth regulators. Turf Formula is a mixture of chelated micro-nutrients, Macro-nutrients, humic acids and mycorrhizal fungi. As stated above, any pesticidal claims that exist on our company's website or printed material involving Turf Formula will be removed so that no confusion or misunderstandings exist involving the Turf Formula product, its intended use and proper application. All claims and instructions for use made on the company website, product label and written literature for the Turf Formula product are specific to the use on Turf Grass production only.

As noted in our letter of February 1, 2013, and as further explained in our telephone conversation, the insertion of a disclaimer statement where a product is being marketed with pesticidal claims or which includes pesticidal active ingredients in its formula is insufficient to remove or exempt such a product from regulation under FIFRA. Regardless of a product's formula, the marketing of a product with pesticidal claims such as "contains natural rooting hormones," "minimizes disease and soil borne pathogens," "provides other growth stimulants not found in ordinary fertilizers," "increases root mass," and the other examples listed in the November 15, 2012, Notice of Warning, would subject a product to regulation as a pesticide under FIFRA. We understand the disclaimer in and of itself is insufficient to remove or exempt any of our companies products from regulation under FIFRA. However, in an effort to ensure the public consumer is clear in their understanding of our products and their intended use, we will keep the disclaimer in place as a safeguard for all who may view our website and research our products. Furthermore, any claims that could be considered "pesticidal in nature that exist on our website and company literature such as "contains natural rooting hormones," "minimizes disease and soil borne pathogens," "provides other growth "stimulants" not found in ordinary fertilizers," "increases root mass," etc. will be removed as required by FIFRA.

To address the violations identified in the Notice of Warning, please submit, by no later than March 15, 2013, for each of the products identified in the Notice of Warning, a signed statement explaining the actions that you have taken to ensure compliance with FIFRA. Such actions may include removal of the product as currently formulated from your catalog and advertising pending registration as a pesticide with the EPA, revision of your website and marketing materials for the product to ensure that pesticidal claims are removed, reformulation of the product to remove any ingredients intended as pesticidal, and/or, in the case of vitamin hormone products not intended for use on food crops, appropriate relabeling to comply with the exemption described at 40 C.F.R. § 152.6(f). Based upon the above intended actions and your approval of such, we will take the described actions to address the concerns your letters have raised. Since our products do not contain any pesticidal ingredients, we will not be reformulating any of our products in question. Our companies websites and marketing materials will be revised to remove all claims that could be considered pesticidal in nature as required in your letters by FIFRA.

The sale, distribution, or offering for sale or distribution of unregistered pesticide products that are not otherwise exempt from FIFRA constitutes a violation of the statute. Failure to correct the identified violations of FIFRA may result in further enforcement including assessment of civil penalties up to \$7,500 per violation.

Your prompt attention to this matter is appreciated. If you have further questions, or would like to set up another conference call next week to discuss (please provide a date, time and telephone number) please do not hesitate to contact me at [lesher.mark@epa.gov](mailto:lesher.mark@epa.gov) or at 913-551-7054.

Mark K. Leshner  
Environmental Scientist  
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Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
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[lesher.mark@epa.gov](mailto:lesher.mark@epa.gov)

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\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*



## Lesher, Mark

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**From:** Lesher, Mark  
**Sent:** Wednesday, March 13, 2013 9:51 AM  
**To:** Teter, Royan  
**Cc:** Dudding, Chris  
**Subject:** FW: Response to your February 22, 2013, e-mail to EPA  
**Attachments:** ATT00001.txt

Tracking:	Recipient	Delivery	Read
	Teter, Royan	Delivered: 3/13/2013 9:51 AM	
	Dudding, Chris	Delivered: 3/13/2013 9:51 AM	Read: 3/13/2013 10:22 AM

Royan,

See information from respondent (Mr. Stephen Smith, Agri-Gro Marketing, Inc., Doniphan, MO) below. Looks like a reasonable request. May I grant an extension to Fri. March 29, 2013, or Mon. April 1, 2013?

Mark

Mark K. Lesher  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
lesher.mark@epa.gov

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**From:** Stephen Smith [mailto:Stephen@agrigo.com]  
**Sent:** Wednesday, March 13, 2013 9:17 AM  
**To:** Lesher, Mark  
**Subject:** RE: Response to your February 22, 2013, e-mail to EPA

Hello Mark,

If possible, I would like to request an extension to respond to your email. The original response date you set below was set for March 15<sup>th</sup> but if I could get a little more time to respond it would be most appreciated.

The reason for this request is my daughter ( who also happens to work in our companies accounting department ) was recently diagnosed with Anti NMDA Receptor Encephalitis. She spent 48 days straight in the hospital from January – February and was just recently released. She will have to spend the next few months staying in our home with my wife and I as she is still not well enough to live on her own and resume work. No excuses, but her illness and having to move back in with my wife and I has turned our world upside down. We are grateful she is recovering and thankful we can be there to help but the reality is that her illness has caused me to fall a little behind in my work including being able to timely address and respond to your letter of March 1.

Again, if you could please allow me an extra week or two to respond, I would be most grateful.



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---

**From:** Leshner, Mark [<mailto:Leshner.Mark@epa.gov>]  
**Sent:** Friday, March 01, 2013 4:41 PM  
**To:** [Stephen@agrigro.com](mailto:Stephen@agrigro.com)  
**Cc:** Leshner, Mark; Dudding, Chris; Teter, Royan  
**Subject:** Response to your February 22, 2013, e-mail to EPA

Dear Mr. Smith:

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As noted in our letter of February 1, 2013, and as further explained in our telephone conversation, the insertion of a disclaimer statement where a product is being marketed with pesticidal claims or which includes pesticidal active ingredients in its formula is insufficient to remove or exempt such a product from regulation under FIFRA. Regardless of a product's formula, the marketing of a product with pesticidal claims such as "contains natural rooting hormones," "minimizes disease and soil borne pathogens," "provides other growth stimulants not found in ordinary fertilizers,"

"increases root mass," and the other examples listed in the November 15, 2012, Notice of Warning, would subject a product to regulation as a pesticide under FIFRA.

To address the violations identified in the Notice of Warning, please submit, by no later than March 15, 2013, for each of the products identified in the Notice of Warning, a signed statement explaining the actions that you have taken to ensure compliance with FIFRA. Such actions may include removal of the product as currently formulated from your catalog and advertising pending registration as a pesticide with the EPA, revision of your website and marketing materials for the product to ensure that pesticidal claims are removed, reformulation of the product to remove any ingredients intended as pesticidal, and/or, in the case of vitamin hormone products not intended for use on food crops, appropriate relabeling to comply with the exemption described at 40 C.F.R. § 152.6(f).

The sale, distribution, or offering for sale or distribution of unregistered pesticide products that are not otherwise exempt from FIFRA constitutes a violation of the statute. Failure to correct the identified violations of FIFRA may result in further enforcement including assessment of civil penalties up to \$7,500 per violation.

Your prompt attention to this matter is appreciated. If you have further questions, or would like to set up another conference call next week to discuss (please provide a date, time and telephone number) please do not hesitate to contact me at [lesher.mark@epa.gov](mailto:lesher.mark@epa.gov) or at 913-551-7054.

Mark K. Lesher  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
[lesher.mark@epa.gov](mailto:lesher.mark@epa.gov)

\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*

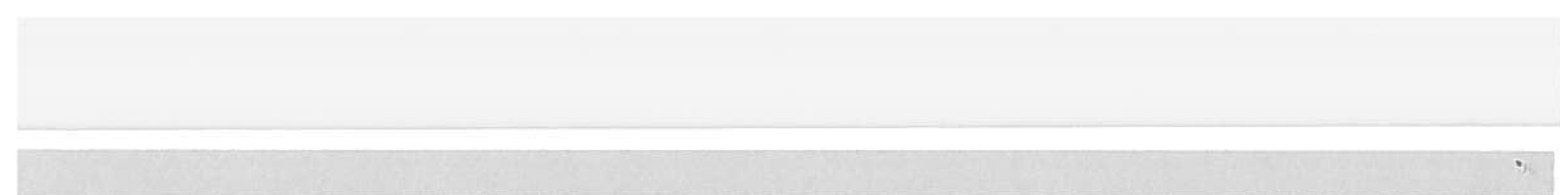
This Email message contained an attachment named  
image001.jpg  
which may be a computer program. This attached computer program could  
contain a computer virus which could cause harm to EPA's computers,  
network, and data. The attachment has been deleted.

This was done to limit the distribution of computer viruses introduced  
into the EPA network. EPA is deleting all computer program attachments  
sent from the Internet into the agency via Email.

If the message sender is known and the attachment was legitimate, you  
should contact the sender and request that they rename the file name  
extension and resend the Email with the renamed attachment. After  
receiving the revised Email, containing the renamed attachment, you can  
rename the file extension to its correct name.

For further information, please contact the EPA Call Center at  
(866) 411-4EPA (4372). The TDD number is (866) 489-4900.

\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*



## **Leshner, Mark**

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**From:** Leshner, Mark  
**Sent:** Thursday, March 14, 2013 4:49 PM  
**To:** 'Stephen Smith'  
**Cc:** Teter, Royan; Dudding, Chris  
**Subject:** RE: Response to your March 1, 2013 letter

**Importance:** High

<b>Tracking:</b>	<b>Recipient</b>	<b>Delivery</b>
	'Stephen Smith'	
	Teter, Royan	Delivered: 3/14/2013 4:49 PM
	Dudding, Chris	Delivered: 3/14/2013 4:49 PM

Dear Mr. Smith,

I am sorry I was not able to respond to you sooner, as was trying to get approval from my supervisor to grant your request for an extension and he was busy yesterday and out of the regional office today. We are sorry to hear about your daughter's illness and understand the stress it has caused for you and your family. We will review your responses in red below and get back to you on the proposed May 1, 2013, deadline date, asap. Again, I am sorry for not getting back to you sooner and thank you for your efforts to respond to EPA before March 15, 2013.

Mark K. Leshner  
Environmental Scientist  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7054  
lesher.mark@epa.gov

---

**From:** Stephen Smith [mailto:Stephen@agrigro.com]  
**Sent:** Thursday, March 14, 2013 4:03 PM  
**To:** Leshner, Mark  
**Subject:** RE: Response to your March 1, 2013 letter

Dear Mr. Leshner,

Since I did not received a response from you requesting an extension to respond to your March 1, letter and having to attend the funeral of a close family friend tomorrow, I will address your letter below with my response highlighted in red for the sake of time. I apologize my response could not be more professional but given the time constraints to work with and the personal issues our family has had to contend with since my daughters illness, I wanted to make sure my reply reached you by the requested due date of tomorrow, March 15, 2013.

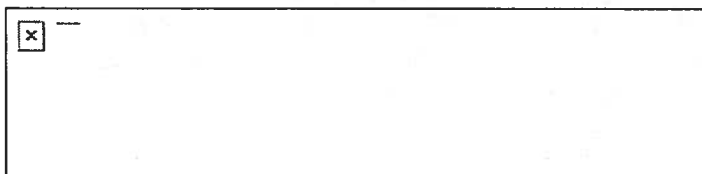
As you will see below, we are striving to be compliant and taking serious measures to address your concerns to keep us compliant and in good standing with the requirements of FIFRA. Upon your approval of the

actions below, we will begin work immediately to correct and address the remaining concerns your letters have raised. We would ask that you allow us to complete these actions by no later than May, 1, 2013.

Again, it is our full intention to have these actions completed and submitted to you for review much sooner and we will certainly strive to have these actions completed well before the May, 1, 2013 deadline.

The actions below will no doubt place us at a serious disadvantage in the market place compared to other companies selling competing/similar products in nature and could result in a significant negative financial impact on our business. Our products are not pesticidal in nature or composition, yet we are treated as though we are a pesticide and restricted from making the claims that "all" other sellers of macro and micro-nutrients are making to sell their products to the ag market here in the US and abroad. Our previous attempts to explain our products claims and mode of action as nutritional, not pesticidal, have been for the most part, overlooked and were never acknowledged or addressed in your letter of March 1. Therefore, we know of no other actions to take at this time other than the following which we have outlined below. Additionally, we have submitted our products, labels, supporting literature and websites to the EPA for review as to their status and are waiting on a ruling from them.

We trust these actions will meet FIFRA's expectations and await your response.



This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

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**From:** Leshner, Mark [<mailto:Leshner.Mark@epa.gov>]  
**Sent:** Friday, March 01, 2013 4:41 PM  
**To:** [Stephen@agrigro.com](mailto:Stephen@agrigro.com)  
**Cc:** Leshner, Mark; Dudding, Chris; Teter, Royan  
**Subject:** Response to your February 22, 2013, e-mail to EPA

Dear Mr. Smith:

On February 22, 2013, I received an email from you in response to letter of February 1, 2013, in which we had specified information to be supplied by Agri-Gro Marketing, Inc. (Agri-Gro) in order to address the violations identified in the Notice of Warning issued to Agri-Gro on November 15, 2012. In your email, you explain your company's position, provide various attachments (including labels for your products), and request for further compliance assistance. From our review of your email and attached documents, in addition to your company's websites, it appears that multiple violations remain which must be addressed in order for Agri-Gro to be in compliance with FIFRA.

From an additional review of your websites: <http://www.agrigro.com> and <http://www.bountiful-harvest.com>, it appears that multiple products continue to be marketed with pesticidal claims and/or include pesticidal active ingredients, as noted in the Notice of Warning. For example, the Ignites2 product webpage shows that the product is being marketed as a pesticide as that term is defined by the FIFRA statute, in that the website and the brochure linked therein make plant regulator claims including "contains ... plant stimulants," "increases root growth," and "establish[es] larger root systems with stronger stalks." You may find further examples of such claims listed in the Notice of Warning.

As you are aware, since you first contacted our company in late 2012, we have made numerous changes to our company's website to address the points of concern you have raised involving the

products we manufacture and the wording we use when promoting them to the general public. We have even gone as far as to add a disclaimer statement to ensure that anyone reading our website are clear on the products, their role in agronomy and the mode of action they involve. As has been stated in all of our previous responses, all of the products manufactured by Agri-Gro Marketing, Inc. are 100% free of any pesticidal active ingredients. The claims we make are based upon the nutritional response they provide to both the targeted plants and soil environment. While we have attempted to explain this by providing written explanations of our products mode of action, the ingredients used, peer reviewed research and universally accepted data, it has obviously fallen short of your expectations. Reading your response to the information we have provided, we can only assume that FIFRA's guidelines leave no room for differentiating a plant growth effect from a nutritional response versus a pesticidal response. Therefore until we can receive further clarification on this matter or obtain EPA exemption for our products, the only option we see at this time is to remove all of the questionable wording in their entirety from our website and any accompanying written literature published involving the products we manufacture.

With that being said, all wording listed on our website, regardless of the product in question, stating claims as follows: including "contains ... plant stimulants," "increases root growth," and "establish[es] larger root systems with stronger stalks." Will be removed from our companies <http://www.agrigro.com> and <http://www.bountiful-harvest.com> websites as required by FIFRA. Furthermore, we will begin to take measures to reprint all supporting literature and remove such claims and wording from any printed material involving all products manufactured by Agri-Gro Marketing, Inc.

As stated in the Notice of Warning, FIFRA defines a pesticide as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant. Marketing a product as "plant stimulant" or "growth stimulant" or with claims to accelerate or retard the growth of particular parts of a plant (e.g., roots or stalks) or to impact germination rates are indications that a product is intended as a plant regulator, and thus is regulated as a pesticide, as opposed to a general nutrient or fertilizer. Similarly, claims that a product increases resistance to disease or increases a plant's defense systems are indicators of a product's fungicidal intent. Unless exempt, products that are plant regulators or fungicides are subject to registration under FIFRA. Agri-Gro Marketing, Inc. does not manufacture any plant regulators or fungicides as defined by FIFRA nor do any of our products contain pesticidal ingredients. Any wording that exist on our companies websites and written literature that represent our products as a "plant stimulant" or "growth stimulant" or claims to accelerate or retard the growth of particular parts of a plant (e.g., roots or stalks) or to impact germination rates, will be removed as required by FIFRA.

As we discussed in our telephone conversation on February 14, 2013, your Bio Turf Formula product may be exempt from the FIFRA registration requirements as a "vitamin hormone product" as referenced at the regulation at 40 C.F.R. § 152.6(f). That regulation states that certain products consisting of a mixture of plant hormones and nutrients are "vitamin hormone products" that are not considered to be plant regulators as defined under Section 2(v) of FIFRA, provided certain criteria are met, including that the product is not intended for use on food crop sites, and is labeled accordingly. Since the Bio Turf Formula product is not clearly identified on its label as not intended for use on food crop sites, it currently is not exempt from regulation under FIFRA as a vitamin hormone product. The Turf Formula product will not qualify as a vitamin hormone product as the product does not contain nor claim to contain on the label, any plant growth hormones or plant growth regulators. Turf Formula is a mixture of chelated micro-nutrients, Macro-nutrients, humic acids and mycorrhizal fungi. As stated above, any pesticidal claims that exist on our company's website or printed material involving Turf Formula will be removed so that no confusion or misunderstandings exist involving the Turf Formula product, its intended use and proper application. All claims and instructions for use made on the company website, product label and written literature for the Turf Formula product are specific to the use on Turf Grass production only.

As noted in our letter of February 1, 2013, and as further explained in our telephone conversation, the insertion of a disclaimer statement where a product is being marketed with pesticidal claims or which includes pesticidal active ingredients in its formula is insufficient to remove or exempt such a product from regulation under FIFRA. Regardless of a product's formula, the marketing of a product with pesticidal claims such as "contains natural rooting hormones," "minimizes disease and soil borne pathogens," "provides other growth stimulants not found in ordinary fertilizers," "increases root mass," and the other examples listed in the November 15, 2012, Notice of Warning, would subject a product to regulation as a pesticide under FIFRA. We understand the disclaimer in and of itself is insufficient to remove or exempt any of our companies products from regulation under FIFRA. However, in an effort to ensure the public consumer is clear in their understanding of our products and their intended use, we will keep the disclaimer in place as a safeguard for all who may view our website and research our products. Furthermore, any claims that could be considered "pesticidal in nature that exist on our website and company literature such as "contains natural rooting hormones," "minimizes disease and soil borne pathogens," "provides other growth "stimulants" not found in ordinary fertilizers," "increases root mass," etc. will be removed as required by FIFRA.

To address the violations identified in the Notice of Warning, please submit, by no later than March 15, 2013, for each of the products identified in the Notice of Warning, a signed statement explaining the actions that you have taken to ensure compliance with FIFRA. Such actions may include removal of the product as currently formulated from your catalog and advertising pending registration as a pesticide with the EPA, revision of your website and marketing materials for the product to ensure that pesticidal claims are removed, reformulation of the product to remove any ingredients intended as pesticidal, and/or, in the case of vitamin hormone products not intended for use on food crops, appropriate relabeling to comply with the exemption described at 40 C.F.R. § 152.6(f). Based upon the above intended actions and your approval of such, we will take the described actions to address the concerns your letters have raised. Since our products do not contain any pesticidal ingredients, we will not be reformulating any of our products in question. Our companies websites and marketing materials will be revised to remove all claims that could be considered pesticidal in nature as required in your letters by FIFRA.

The sale, distribution, or offering for sale or distribution of unregistered pesticide products that are not otherwise exempt from FIFRA constitutes a violation of the statute. Failure to correct the identified violations of FIFRA may result in further enforcement including assessment of civil penalties up to \$7,500 per violation.

Your prompt attention to this matter is appreciated. If you have further questions, or would like to set up another conference call next week to discuss (please provide a date, time and telephone number) please do not hesitate to contact me at [lesher.mark@epa.gov](mailto:lesher.mark@epa.gov) or at 913-551-7054.

Mark K. Leshner  
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[lesher.mark@epa.gov](mailto:lesher.mark@epa.gov)

\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*

This Email message contained an attachment named



image001.jpg  
which may be a computer program. This attached computer program could contain a computer virus which could cause harm to EPA's computers, network, and data. The attachment has been deleted.

This was done to limit the distribution of computer viruses introduced into the EPA network. EPA is deleting all computer program attachments sent from the Internet into the agency via Email.

If the message sender is known and the attachment was legitimate, you should contact the sender and request that they rename the file name extension and resend the Email with the renamed attachment. After receiving the revised Email, containing the renamed attachment, you can rename the file extension to its correct name.

For further information, please contact the EPA Call Center at (866) 411-4EPA (4372). The TDD number is (866) 489-4900.

\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*



**Leshner, Mark**

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**To:** Stephen@agrigro.com  
**Cc:** Leshner, Mark; Dudding, Chris; Teter, Royan  
**Subject:** Response to your February 22, 2013, e-mail to EPA

Dear Mr. Smith:

On February 22, 2013, I received an email from you in response to letter of February 1, 2013, in which we had specified information to be supplied by Agri-Gro Marketing, Inc. (Agri-Gro) in order to address the violations identified in the Notice of Warning issued to Agri-Gro on November 15, 2012. In your email, you explain your company's position, provide various attachments (including labels for your products), and request for further compliance assistance. From our review of your email and attached documents, in addition to your company's websites, it appears that multiple violations remain which must be addressed in order for Agri-Gro to be in compliance with FIFRA.

From an additional review of your websites: <http://www.agrigro.com> and <http://www.bountiful-harvest.com>, it appears that multiple products continue to be marketed with pesticidal claims and/or include pesticidal active ingredients, as noted in the Notice of Warning. For example, the Ignites2 product webpage shows that the product is being marketed as a pesticide as that term is defined by the FIFRA statute, in that the website and the brochure linked therein make plant regulator claims including "contains ... plant stimulants," "increases root growth," and "establish[es] larger root systems with stronger stalks." You may find further examples of such claims listed in the Notice of Warning.

As stated in the Notice of Warning, FIFRA defines a pesticide as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant. Marketing a product as "plant stimulant" or "growth stimulant" or with claims to accelerate or retard the growth of particular parts of a plant (e.g., roots or stalks) or to impact germination rates are indications that a product is intended as a plant regulator, and thus is regulated as a pesticide, as opposed to a general nutrient or fertilizer. Similarly, claims that a product increases resistance to disease or increases a plant's defense systems are indicators of a product's fungicidal intent. Unless exempt, products that are plant regulators or fungicides are subject to registration under FIFRA.

As we discussed in our telephone conversation on February 14, 2013, your Bio Turf Formula product may be exempt from the FIFRA registration requirements as a "vitamin hormone product" as referenced at the regulation at 40 C.F.R. § 152.6(f). That regulation states that certain products consisting of a mixture of plant hormones and nutrients are "vitamin hormone products" that are not considered to be plant regulators as defined under Section 2(v) of FIFRA, provided certain criteria are met, including that the product is not intended for use on food crop sites, and is labeled accordingly. Since the Bio Turf Formula product is not clearly identified on its label as not intended for use on food crop sites, it currently is not exempt from regulation under FIFRA as a vitamin hormone product.

As noted in our letter of February 1, 2013, and as further explained in our telephone conversation, the insertion of a disclaimer statement where a product is being marketed with pesticidal claims or which includes pesticidal active ingredients in its formula is insufficient to remove or exempt such a product from regulation under FIFRA. Regardless of a product's formula, the marketing of a product with pesticidal claims such as "contains natural rooting hormones," "minimizes disease and soil borne pathogens," "provides other growth stimulants not found in ordinary fertilizers," "increases root mass," and the other examples listed in the November 15, 2012, Notice of Warning, would subject a product to regulation as a pesticide under FIFRA.

To address the violations identified in the Notice of Warning, please submit, by no later than March 15, 2013, for each of the products identified in the Notice of Warning, a signed statement explaining the actions that you have taken to ensure compliance with FIFRA. Such actions may include removal of the product as currently formulated from your catalog and advertising pending registration as a pesticide with the EPA, revision of your website and marketing materials for the product to ensure that pesticidal claims are removed, reformulation of the product to remove any

ingredients intended as pesticidal, and/or, in the case of vitamin hormone products not intended for use on food crops, appropriate relabeling to comply with the exemption described at 40 C.F.R. § 152.6(f).

The sale, distribution, or offering for sale or distribution of unregistered pesticide products that are not otherwise exempt from FIFRA constitutes a violation of the statute. Failure to correct the identified violations of FIFRA may result in further enforcement including assessment of civil penalties up to \$7,500 per violation.

Your prompt attention to this matter is appreciated. If you have further questions, or would like to set up another conference call next week to discuss (please provide a date, time and telephone number) please do not hesitate to contact me at [lesher.mark@epa.gov](mailto:lesher.mark@epa.gov) or at 913-551-7054.

Mark K. Lesher  
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[lesher.mark@epa.gov](mailto:lesher.mark@epa.gov)

## **Leshner, Mark**

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**From:** Stephen Smith [Stephen@agrigo.com]  
**Sent:** Friday, February 22, 2013 3:25 PM  
**To:** Leshner, Mark  
**Cc:** Leshner, Mark  
**Subject:** FW: EPA article # 7011-0470-0002-2746-5408  
**Attachments:** First response to EPA with disease explanation references.docx; Bao cao Agrigo 2008 HT English Rice.doc; Research for influence of Turf Formula relating the gro.htm; 2011 California revised agrigo label.pdf; 2012 foliar Blend label sate submission 5 55 275.pdf; IgniteS2 label state submission5gal 55 275 2012.pdf; turf formula California 2012.pdf

Dear Mark,

Let me first say thank you for the phone conversation that Tim and I shared with you last week. In the following letter along with the numerous attachments provided herein, we have attempted to provide further evidence of our products and the mode of action they operate by and to clarify any confusion or misunderstandings that may be associated with the same. We appreciate your patience and cooperation as we work to address the concerns your letter has raised and are striving to make the changes needed to insure we are properly registering and marketing these products to the consumer.

To begin, let me repeat our position that while some of the claims made regarding our products may be similar to 'pesticidal claims', our products "Do Not" contain pesticidal active ingredients. In the following letter, I will be sharing more specific information with you regarding our products ingredients and the manufacturing processes used to produce the same. This information is proprietary to our company and considered completely confidential and is provided only to address the concerns your letter has raised against our company and the products we produce. All information contained herein is to be kept in strict confidence and is not for public release.

One of the challenges for companies like ours is the fact that there are no consistent labeling and registration requirements shared from State to State between each States Department of Agriculture. In other words, the wording and content that may be required on a Foliar Blend label that is approved by the State of Missouri is completely different from what the State of California will accept. For example, some states allow the listing of non-plant food ingredients to be included on the label while other states will not allow those ingredients to be listed but only want the ingredients that pertain to the guaranteed analysis on the label to be displayed. As has been stated previously, our products in question ( Agri-Gro, Turf Formula, Foliar Blend, IgniteS2 and Bountiful Harvest Bio-Stimulant ) are a combination of chelated macro- and micro-nutrients but they also contain additional ingredients to enhance the performance of the product that are not required to be listed on the label at the time of registration. While most all of our products claims are justified and explained by the nutritional response they trigger in both the soil and plant, these additional ingredients also contribute to and further support the claims we make.

All of the products in question above share many similarities in their formulations but they are each packaged and labeled to target a different target audience. Agri-Gro, Foliar Blend and IgniteS2 are sold to commercial growers while Turf Formula is sold specifically to turf grass producers and the Bountiful Harvest line to the home and garden market. In addition to their macro and micro-nutrient compositions, each of these products also contain natural organic acids for chelating agents, humic and fulvic acids, corn sugars and mycorrhizae fungi. There are numerous sources for each of these products throughout North America and most all of them make claims that are consistent with those made by our company. Furthermore, we have been advised by our

suppliers of these ingredients that they are not a pesticide nor do they do not require an EPA registration and many of the suppliers we use are in fact, certified organic through the Organic Material Review Institute.

Here is a list of some of our suppliers and their websites for these products in particular:

Humic & Fulvic Acids: [www.blackearth.com](http://www.blackearth.com) , [www.humicgrowthsolutions.com](http://www.humicgrowthsolutions.com)

Mycorrhizae Fungi: [www.mycorrhizae.com](http://www.mycorrhizae.com)

While these ingredients play an important role in our technologies to enhance overall product performance and separate us from our competitors, the key mode of action behind our products are the macro and micro-nutrients they contain. It is here that we feel confusion exists in your interpretation of our products, what they are and how they work to provide the advertised claims. In our conversation last week, we acknowledged that some of the claims made on our website are similar in nature to “pesticidal claims” but our position is that claims such as “stronger stalks” or “larger root systems” for example, are also consistent with the plant growth response caused by the macro- and micro-nutrients contained in our products.

For example, Zinc is known to contribute to increasing root growth and development. One of the largest suppliers of chelated zinc in the nation is Nutra-Flo/ Nulex and their Zinc RGS ( root growth stimulator ) product. [http://www.nulex.com/nulex\\_root\\_growth\\_stimulator.html](http://www.nulex.com/nulex_root_growth_stimulator.html)

In providing this, I am not trying to single Nulex out as their claims are consistent with most all other zinc suppliers in the country. I am simply stating this because most all zinc supplements sold in the US today make similar claims to support root growth and development because that is a proven and accepted fact. This response is not from a pesticidal effect but a nutritional response.

Zinc, derived from Zinc Sulfate is just one of the many ingredients used in our products, which also contain Boron, Manganese, Magnesium, Sulfur, Cobalt, Molybdenum, Potassium, and Nitrogen to name a few. Rather than offer a product that contains only one element, we combine numerous essential elements together to meet a broader spectrum of plant and soil nutritional requirements.

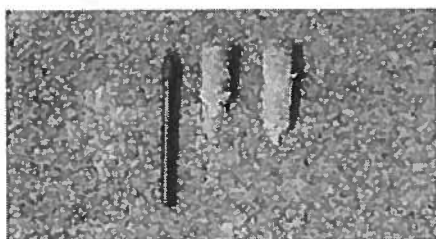
According to “Advances in Agronomy” volume 110 copyright 2011, chapter 4, The Role of Mineral Nutrition on Root Growth of Crop Plants “ Mineral nutrition is an important factor influencing the growth of plant roots. In nutrient-deficient soils, root weight often increases in a quadratic manner with the addition of chemical fertilizers.” This chapter, peer reviewed by Dr. Charles Allan Jones, Professor, Texas – A & M University and AgriLife Research and Extension Service, Dallas , Texas discusses the researched effects of nitrogen, phosphorous, potassium, calcium, magnesium, sulfur, and micronutrients on root growth of crop plants.

Pages 306 through 310 of this same chapter 4 will display research from Fageria (2002) showing that rice and corn roots were increased by weight and length as zinc rates were increased from 0 mg/kg to 5 mg/kg, 5 mg/kg to 10 mg/kg, 10 to 20, 20 to 40 etc. These pages also have charts and tables for the effects of boron, iron, and copper on root weight and length for corn, wheat, rice , dry beans, and soybeans. Each nutrient had an effect on root growth which varied by crop and deficiency level of each nutrient. For example, boron requirements of dicots are generally higher than monocots (Fageria 2000) Fageria reported that maximum root growth of upland rice can be achieved with the application of 0.4 mg B kg<sup>-1</sup> soil, whereas maximum root growth of dry beans required 1.9 mg B kg<sup>-1</sup> of soil. This chapter also discusses how that calcium and potassium deficiencies reduce root growth while high levels of magnesium does the same in reducing root mass. All of these specific plant responses to the root mass and length resulted from adding or lowering essential mineral nutrients in different degrees.

This one chapter is supported by research and references from more than 280 research papers and scientific journals from the US and Internationally.

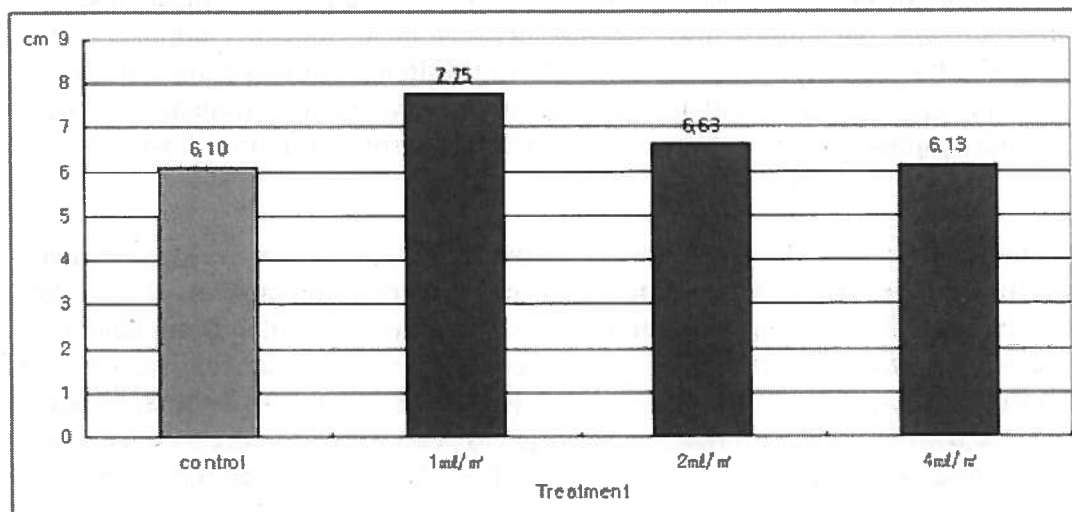
In 2008, our Agri-Gro liquid concentrate, a .05% zinc and .05% boron liquid micronutrient fertilizer was placed in a trial by The College of Technical Engineering and Agriculture, Cuu long Delta Rice Research Institute. They were to test for rice growth and yield. Their summary ( full report attached) included findings that stated," Applying Agri-Gro increased weight of dry root biomass up to 28% in plots with reduced fertilizer(20% N, 25% P, 25% K) This has been observed as well in any testing which root mass measurements were part of the study.

Turf Formula which has a similar analysis as Agri-Gro concentrate had similar findings in 2001 by Samsung Everland( a subsidiary of Samsung Conglomerate in Korea) at the Research Field for Turf and Environment Research Institute while testing for the influence of Turf Formula relating to the growth of turf from January through September of 2001.



## 2. Length of Root:

To the result of research on an effect reached to lengths of root of an each applied area at the time of three weeks after turf formula applied, area No. 2 which applied turf formula in 1 ml per square meter enhanced root development more than area No. 3 and 4 which applied with turf formula 2 ml per square meter and 4 ml per square meter respectively, furthermore, enhanced 27% more that non-applied area, area No. 1.



Foliar Blend, IgniteS<sup>2</sup>, Agri-Gro concentrate, Turf Formula and Bountiful Harvest Bio-Stimulant all have at least zinc and boron as part of the guaranteed analysis. Therefore based upon the scientific evidence provided, each product should be expected to affect root growth and claims to that effect should be permissible from a nutritional perspective without being classified as only possible by a response from a registered growth regulator or pesticide.

With regard to improved germination claims. Manganese sulfate has been documented to increase germination rates better than Indole-3-acetic acid or colchicines since 1943. Reference the American Journal of Botany Vol 31, No. 6 (Jun, 1944) pp. 356-367. Published by the Botanical Society of America. Growth Stimulation by manganese sulfate, Indole-3-Acetic Acid and Colchicine in Pollen Germination and Pollen Tube Growth. Tsung=Le Loo and Tsung-Chen Hwang. It is an accepted scientific fact that manganese contributes to improved germination of seeds, therefore why should our product be classified as a pesticide for making such a claim when we have manganese in our products and decades of science on our side.

While I have only touched on zinc, boron and manganese, It is not my intention to bore you and go through each individual element that is contained in our products to outline the role that each of those elements play in the plants development and life cycle. It is an accepted fact that most all plant life requires 16 essential elements to live and fulfill its life cycle and I'm confident you are aware of this. Each of these elements are necessary to obtain proper plant growth, development and health. If a breakdown of each individual micro-macro and trace element our products contain and its role on plant growth and development are what you are looking for, then we will be happy to provide a detailed report with collaborating evidence to support such. However, I doubt that is what you are seeking. We are simply trying to explain from a plant nutrition response, evidence for the claims we have made.

Mark, we have attached numerous reports, studies and product labels for your review. We have taken steps to modify the wording on our websites to insure we are not misrepresenting our products or misleading the consumer. We are not claiming that any of our products are to be used in place of any pesticide, fungicide, insecticide, herbicide, etc. nor are they to be confused with such inputs. We do feel the claims we make are supported by decades of accepted peer reviewed evidence of the role of each of these essential elements in plant growth and development. With that being said, we do not want to be at odds with your organization and want to be in compliance with your expectations for our business. I would ask that if after reviewing this letter and the documents attached, you still feel it is appropriate that we further modify some of the wording contained on our website, we are certainly open to such. We ask that you please provide specific examples of the wording in question and the changes we can make to state our claims properly. For example; if it is not permissible for us to say "increases root growth", despite the evidence that our products contain zinc and mycorrhizae fungi which are known to 'increase root growth', then how can we reword such statements to be in compliance yet still state this growth response as all other suppliers of these inputs do? In addition to the disclaimer statement we have added to our website, if you have suggestions on how we can further separate our products to prevent any misunderstanding of our products intended use, please tell us specifically what we can do and we will do our utmost to comply.

In closing, I trust that we have provided evidence and reasoning for the claims in question as well as supplied justification for such from a nutritional basis. If needed, we can supply much more of the same on each of the individual elements our products contain. Common sense tells me these claims are permissible from both a nutritional response which is what we are, and from a pesticidal response which is what we are not. It all depends on what is the mode of action behind the response. In our case it is nutritional. As I stated in our first response, we are absolutely not a pesticide, we use no ingredients that are classified as pesticidal ingredients nor do we want to be viewed as or replace the role of pesticides. We are starting to feel like a square peg that is being



forced to fit in a round hole. Nevertheless, we are sincere in wanting to address this concern, meet your expectations and put this matter behind us. I trust that this letter aids in accomplishing such.

Have a good weekend and we look forward to your reply.



**Stephen Smith**

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